

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Requesting the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors to authorize the Director of Transportation to execute the Public Private Partnership Agreement between the City and County of San Francisco, through the SFMTA, the City of San Jose, and Better Place Mobility Services, Inc. (“Better Place”), for the proposed implementation of the battery-switch electric taxi program and the Memorandum of Understanding (MOU) with Department of Public Works for rental payments of \$6,800 per month for a five year period for the battery switch station location at Broadway and Davis Streets .

**SUMMARY:**

- Better Place has developed a proprietary technology to support electric vehicles with battery-switch stations that use a robotic system to switch new batteries for depleted batteries, and cool, charge and store the batteries until they are used by another vehicle.
- The SFMTA was recently awarded a grant of \$6,988,000 of Congestion Management Air Quality (CMAQ) grant funds administered by the Federal Highway Administration (FHWA) through the California Department of Transportation (Caltrans) for the deployment of four battery-switch stations and 61 battery-switch taxi vehicles to be divided between the cities of San Francisco and San Jose, and 25 fixed battery electric taxi vehicles to be used in San Francisco.
- The grant funds will be used for the Bay Area Electric Vehicle Taxi Corridor Program (the Program), a component of the Metropolitan Transportation Commission’s Climate Initiatives Program. It is projected that the Program will reduce greenhouse gas emissions by approximately 700,000 tons annually.
- The total Program value is over \$20 million, with Better Place providing a cash and in-kind contribution of over \$10 million, \$6 million provided through grant funds, and the balance by public and private local match and grant funds. The SFMTA’s local match is \$300,000 in in-kind staff costs over the life of the Program plus \$6,800 per month in rent to Department of Public Works for a five year period for the battery-switch station location at Broadway and Davis Streets.
- The FHWA requires a legally binding written agreement between the public agency sponsor and the private partner before a CMAQ-funded project may be funded. The term of the Agreement is 10 years.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Public Private Partnership Agreement
3. Memorandum of Understanding between SFMTA and the Department of Public Works

<b>APPROVALS:</b>	<b>DATE</b>
DIRECTOR OF TRANSPORTATION _____	<u>5/7/12</u>
SECRETARY _____	<u>5/7/12</u>

**ASSIGNED SFMTAB CALENDAR DATE:** May 15, 2012

## PAGE 2.

### PURPOSE

The purpose of this calendar item is to request approval of a Public Private Partnership Agreement between the City and County of San Francisco, through the SFMTA, the City of San Jose, and Better Place for the proposed implementation of the battery-switch electric taxi program and approval of a Memorandum of Understanding (MOU) with Department of Public Works for rental payments of \$6,800 per month for a five year period for the battery switch station location at Broadway and Davis Streets.

### GOAL

Goal 1: Customer Focus: To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy

Objective 1.3: Reduce emissions as required by SFMTA Clean Air Plan

Objective 1.5: Increase percentage of trips using more sustainable modes

- *The deployment of 61 electric battery-switch taxis between San Francisco and San Jose is anticipated to reduce greenhouse gas emissions by 700,000 tons annually.*

Goal 3: External Affairs/Community Relations: To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry

Objective 3.4 Enhance proactive participation and cooperatively strive for improved regional transportation

- *The implementation of electric taxi vehicles would be the first programmatic deployment of electric taxi vehicles in the world.*
- *The deployment of four battery-switch stations between San Francisco and San Jose supports the regional use of battery-switch electric vehicles.*

Goal 6: Information Technology: To improve service and efficiency, the SFMTA must leverage technology

Objective 6.1: Information and Technology Leadership: Identify, develop and deliver the enhanced systems and technologies required to support SFMTA's 2012 goals

- *Using battery-switch electric vehicles for San Francisco's electric taxi fleet is innovative and ground-breaking technology.*

### DESCRIPTION

Better Place has developed proprietary technology to support electric vehicles with battery-switch stations that use a robotic system to switch new batteries for depleted batteries, and cool, charge and store the batteries until they are fully charged and ready to be used by another vehicle. The battery-switch stations have the capacity to integrate with the power grid to minimize demand at peak load times.

**PAGE 3.**

The SFMTA was recently awarded a grant of \$6,988,000 of Congestion Management Air Quality (CMAQ) grant funds administered by the FHWA through Caltrans, of which \$6,000,000 is for the deployment of four battery-switch stations and 61 battery-switch taxi vehicles to be divided between the cities of San Francisco and San Jose. The federal CMAQ legislation (23 USC § 149(e)) encourages public private partnerships to cooperatively implement any project carried out with CMAQ funds that is not otherwise an obligation imposed under the Clean Air Act or any other federal law. Better Place and San Jose, the City's partners, were instrumental in helping SFMTA prepare the grant application. The remaining \$988,000 is for the acquisition of 25 fixed battery (plug in) electric taxi vehicles, which is a separate program and not part of the Agreement. Only the proposed implementation of Better Place's battery-switch stations is the subject of this Public Private Partnership Agreement (Agreement).

The total Program value for the battery-switch stations in San Jose and San Francisco is over \$20 million, with Better Place providing cash and in-kind contributions of over \$10 million, \$6 million is provided through grant funds, and the balance by public and private local match and grant funds. The SFMTA's local match is \$300,000 for in-kind staff costs over the life of the Program. In addition, SFMTA has committed to rental payments of \$6,800 per month for five years to DPW for the battery-switch station located downtown near Broadway and Davis Streets.

The grant funds are proposed to be used for the Bay Area Electric Vehicle Taxi Corridor Program (the Program), a component of the Metropolitan Transportation Commission's Climate Initiatives Program. It is projected that the Program will reduce greenhouse gas emissions by at least 700,000 tons annually.

Phase One of the proposed Program involves the construction of two battery-switch stations, as well as the acquisition of six custom-built electric vehicle (EV) taxis with battery-switch capacity. Two of those EVs are anticipated to go into service as San Francisco taxis in 2013, with an anticipated useful life of approximately three years.

Phase Two of the proposed Program involves the construction of two additional battery-switch facilities in each of the two cities, and the acquisition of an additional 55 custom-built EV taxis with battery-switch capacity in 2014.

San Francisco's two battery-switch stations are anticipated to be located at the San Francisco International Airport near the compressed natural gas fueling station, and at an off-street parking facility at Broadway and Davis under the jurisdiction of the Department of Public Works. The battery-switch station located downtown near Broadway and Davis Streets would include a visitor educational center where the battery-switch process can be observed.

Under the proposed Agreement, Better Place would be responsible for entering into ground leases for the battery-switch station sites, and for all construction, maintenance and operation of the battery-switch stations and procurement of all battery-switch vehicles. Better Place would also be required to provide consumer education as part of the Agreement. The anticipated useful life of the battery-switch stations is the earlier of nine years or 100,000 battery switches.

SFMTA would act as the Project Sponsor and lead agency in administering the grant funds. SFMTA would distribute grant funds in accordance with the terms and conditions of the grant, and would provide in-kind staff support for administrative services such as contract administration, grants administration, legal services, billing, encumbrance and disbursement of funds and other support activities. Under the Agreement, SFMTA would designate a grant manager and a program manager to execute this responsibility.

## **PAGE 4.**

The SFMTA proposes to take title to the battery-switch stations in order to comply with federal regulations regarding disbursement of grant funds and then lease them to Better Place, which would have sole responsibility to operate and maintain the stations. Better Place would also assume all liability for the stations, and would indemnify the City for any claims arising out of their operation of the stations. Better Place would also be required to provide collateral to remove the battery-switch stations at the end of the term of the Agreement or in the event of Better Place's default.

Under the Agreement, SFMTA would (1) work with other City departments to secure suitable battery-switch station locations, (2) work with Better Place to respond to public comments about the Program, and (3) secure operating permits for the electric taxi vehicles and allow them to operate as San Francisco taxis. Recently, a categorical exemption was issued for the proposed site at the San Francisco International Airport. Environmental review is currently underway for a second proposed site at Davis and The Embarcadero.

The City of San Jose would be required by the Agreement to (1) designate a Program Manager, (2) oversee Better Places' construction in San Jose, (3) review Better Place invoices, (4) provide quarterly financial reports, (5) keep records, (6) help identify battery-switch station sites, (7) work with its own Planning Department to conduct environmental review of the Program as implemented in San Jose and (8) work with Better Place to respond to public comments about the Program.

This grant-funded Program has broad support from many public and private partners:

- SF Environment is providing \$100,000 of funding from a grant from the U.S. Department of Energy.
- City CarShare anticipates integrating two of the Phase One EVs into its fleet for use by specially trained individuals.
- California ISO would provide technical advice and analyze, test and evaluate the impact of the battery-switch stations on the power grid.
- Local taxi companies would provide dispatch service and drivers for the EV taxis.
- Plug In America would assist to develop training and educational materials about the Program.
- Bay Area Air Quality Management District will be providing a supporting grant to Better Place of \$450,000.

The FHWA requires a legally binding written agreement between the public agency sponsor and the private partner before a CMAQ-funded project may be funded. Accordingly, the parties negotiated the attached Public Private Partnership Agreement and staff requests the Board to authorize the Director of Transportation to enter into the PPP so that implementation of the proposed Program can proceed after completion of environmental review.

The City Attorney has reviewed this report.

## **ALTERNATIVES CONSIDERED**

If the SFMTA does not execute a written agreement with the other grant partners, the FHWA will not authorize disbursement of grant funds for the proposed battery-switch electric taxi Program.

## **FUNDING IMPACT**

The SFMTA would be the lead agency to pass through grant funds to the other grant partners, the City of San Jose and Better Place, pursuant to the grant requirements and the provisions of the PPP. The SFMTA has committed to \$300,000 of in-kind local match for the grant over three years, which would be met

**PAGE 5.**

through the dedication of staff resources to the Program. In addition, the SFMTA would establish a Memorandum of Understanding with DPW to pay \$6,800 per month for five years to replace revenue lost to DPW for the use of the property, which is currently being used as a parking lot.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

On June 14, 2011, the San Jose City Council authorized the San Jose City Manager to execute the Public Private Partnership Agreement.

**RECOMMENDATION**

Staff recommends that the SFMTA Board authorize the Director of Transportation to execute the Public Private Partnership Agreement between the City, the City of San Jose and Better Place for the proposed implementation of the battery-switch electric taxi program of a Memorandum of Understanding (MOU) with Department of Public Works for rental payments of \$6,800 per month for a five year period for the battery switch station location at Broadway and Davis Streets.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, Better Place Mobility Services, Inc. (Better Place) has developed a proprietary technology to support electric vehicles with battery-switch stations that use a robotic system to switch new batteries for depleted batteries, and cool, charge and store the batteries until they are used by another vehicle; and,

WHEREAS, The SFMTA was recently awarded a grant of \$6,000,000 of Congestion Management Air Quality (CMAQ) grant funds administered by the Federal Highway Administration (FHWA) through the California Department of Transportation for the deployment of four battery-switch stations and 61 battery-switch taxi vehicles to be divided between the cities of San Francisco and San Jose; and,

WHEREAS, The grant funds would be used for the Bay Area Electric Vehicle Taxi Corridor Program (the Program), a component of the Metropolitan Transportation Commission's Climate Initiatives Program; and,

WHEREAS, The federal CMAQ legislation (23 USC § 149(e)) encourages public private partnerships to cooperatively implement any project carried out with CMAQ funds that is not otherwise an obligation imposed under the Clean Air Act or any other federal law; and

WHEREAS, The FHWA requires a legally binding written agreement between the public agency sponsor and the private partner before a CMAQ-funded project may be funded; and

WHEREAS, It is projected that the Program would reduce greenhouse gas emissions by approximately 700,000 tons annually; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute the Public Private Partnership Agreement between the City and County of San Francisco, through the SFMTA, the City of San Jose, and Better Place Mobility Services, Inc., for the disbursement of \$6,000,000 in FHWA grant funds for a total contract term of ten years for the proposed implementation of the battery-switch electric taxi program, subject to completion of environmental review; and, be it

FURTHER RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute a Memorandum of Understanding with Department of Public Works to pay \$6,800 per month for five years to DPW for the use of the property.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of May 15, 2012.

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**PUBLIC PRIVATE PARTNERSHIP AGREEMENT**

**BETWEEN**

**THE CITY AND COUNTY OF SAN FRANCISCO, THROUGH ITS MUNICIPAL  
TRANSPORTATION AGENCY, BETTER PLACE MOBILITY SERVICES, INC., AND  
THE CITY OF SAN JOSE**

## TABLE OF CONTENTS

	<u>Page</u>
1. Definitions.....	7
1.1. Agreement.....	8
1.2. Battery Switch Station .....	8
1.3. Bay Area Air Quality Management District; BAAQMD .....	8
1.4. Bay Area Electric Vehicle Taxi Corridor Program; Program.....	8
1.5. Bovis Lend Lease.....	8
1.6. California Department of Transportation; Caltrans .....	8
1.7. City.....	8
1.8. Director of Transportation .....	8
1.9. Electric Vehicle; EV .....	8
1.10. Federal Highway Administration; FHWA.....	8
1.11. FHWA Grant.....	8
1.12. Force Majeure Event.....	8
1.13. Program.....	9
1.14. San Francisco Municipal Transportation Agency; SFMTA .....	9
1.15. San José.....	9
1.16. SF Environment .....	9
1.17. Taxi Companies .....	9
2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.....	9
3. Term of the Agreement.....	9
4. Effective Date of Agreement .....	9
5. Program Phases.....	9
5.1. Phase 1 .....	9
5.2. Phase 2 .....	10
5.3. Reassessment of Scope .....	10
6. Roles and Responsibilities of Parties.....	10
6.1. Better Place .....	10
6.1.1 Design.....	10

6.1.2	Environmental Review.....	10
6.1.3	Leases, Licenses, Permits, and Approvals .....	10
6.1.4	Procurement .....	10
	(a) Battery Switch Stations.....	10
	(b) EVs.....	10
6.1.5	Construction.....	11
6.1.6	Operation of Battery Switch Stations .....	11
6.1.7	Maintenance.....	11
6.1.8	Environmental Review.....	11
6.1.9	Marketing; Outreach Activities.....	11
6.1.10	Site Leases .....	11
6.1.11	Other Grants.....	11
6.1.12	Grid Services Demonstration.....	12
6.1.13	Procurement Reporting Requirements.....	12
6.1.14	Documentation of Emissions Savings .....	12
6.1.15	Staffing.....	12
6.1.16	Merchandising.....	12
6.2.	SFMTA .....	12
	6.2.1 Project Sponsor .....	12
	6.2.2 Disbursement of Grant Funds .....	12
	6.2.3 Administrative Services .....	12
	6.2.4 Grant Manager .....	13
	6.2.5 Program Manager.....	13
	6.2.6 Site Selection .....	13
	6.2.7 Monitoring of Construction Activities.....	13
	6.2.8 Public Notice.....	13
	6.2.9 Taxi Regulation.....	13
6.3.	San José.....	13
	6.3.1 Program Manager.....	13
	6.3.2 Monitoring of Construction Activities.....	13
	6.3.3 Review of Invoices .....	14
	6.3.4 Reports .....	14
	6.3.5 Recordkeeping .....	14

6.3.6	Site Selection .....	14
6.3.7	Environmental Review.....	14
6.3.8	Public Notice.....	14
6.3.9	Taxi Regulation.....	14
6.3.10	Ground Lease(s).....	14
7.	Other Program Participants.....	15
8.	Payments; Cost Principles.....	15
8.1.	Amount of Contract .....	15
8.2.	Payment.....	15
8.3.	Cost Principles .....	15
9.	Guaranteed Maximum Costs.....	15
10.	Submitting False Claims; Monetary Penalties .....	16
11.	Disallowance.....	16
12.	Taxes.....	16
12.1.	Obligation .....	16
12.2.	Possessory Interest Taxes .....	16
13.	Independent Contractor; Payment of Taxes and Other Expenses.....	17
13.1.	Independent Contractor.....	17
13.2.	Payment of Taxes and Other Expenses.....	17
14.	Insurance .....	17
15.	Indemnification .....	19
16.	Incidental and Consequential Damages .....	20
17.	Liability of City and San José.....	20
18.	Default; Remedies.....	20
18.1.	Better Place Default .....	20
18.1.1	Failure to Perform Program Duties.....	20
18.1.2	Failure to Perform Other Covenants .....	20
18.1.3	Public Welfare .....	20
18.1.4	Voluntary Insolvency.....	21
18.1.5	Involuntary Insolvency .....	21
18.1.6	No Default.....	21
18.2.	City Default.....	21
18.2.1	Failure to Disburse Funds .....	21

18.2.2	Failure to Comply with Applicable Laws .....	21
18.2.3	Voluntary Insolvency .....	21
18.2.4	Involuntary Insolvency .....	22
18.2.5	No Default.....	22
18.3.	San José Default.....	22
18.3.1	Failure to Comply with Applicable Laws .....	22
18.3.2	Failure to Perform Other Covenants .....	22
18.3.3	Voluntary Insolvency .....	22
18.3.4	Involuntary Insolvency .....	22
18.3.5	No San José Default.....	22
19.	Force Majeure Events .....	23
19.1.	No Liability .....	23
19.2.	Optional Termination.....	23
20.	Remedies Upon Default.....	23
20.1.	Better Place Default .....	23
20.1.1	Termination.....	23
20.1.2	Right to Cure.....	23
20.1.3	Withholding of Grant Funds .....	23
20.2.	City Default.....	24
20.3.	San José Default.....	24
20.4.	Exercise of Remedies.....	24
21.	Termination for Convenience .....	24
21.1.	San José.....	24
21.2.	City.....	24
21.3.	Duties of Better Place .....	24
21.4.	Submission of Invoice.....	24
22.	Consequences upon Expiration; Survival of Contract Provisions .....	25
22.1.	Expiration of Term.....	25
22.2.	Survival .....	26
23.	Conflict of Interest .....	26
24.	Proprietary or Confidential Information of Parties .....	27
25.	Notices to the Parties .....	27
26.	Ownership of Battery Switch Stations, EVs; Lease of Battery Switch Stations .....	28

26.1.	Ownership .....	28
26.2.	Lease of Battery Switch Stations .....	28
26.2.1	Term of Lease .....	28
26.3.	Obligations of Contractor .....	28
27.	Works for Hire .....	29
27.1.	General .....	29
27.2.	Promotions or Advertising .....	29
27.3.	Link to SFMTA Web Site .....	29
27.4.	Link to Better Place's Web Site .....	29
28.	Audit and Inspection of Records .....	29
29.	Assignment .....	30
30.	Non-Waiver of Rights .....	30
31.	Earned Income Credit (EIC) Forms .....	30
32.	Disadvantaged Business Enterprise Program/Subcontractors .....	30
32.1.	Policy .....	30
32.2.	UDBE Goal .....	31
32.3.	Monitoring, Counting and Reporting UDBE Participation .....	31
32.4.	Substitutions .....	31
33.	Nondiscrimination; Penalties .....	31
33.1.	Better Place Shall Not Discriminate .....	31
33.2.	Subcontracts .....	31
34.	MacBride Principles—Northern Ireland .....	31
35.	Tropical Hardwood and Virgin Redwood Ban .....	31
36.	Drug-Free Workplace Policy .....	31
37.	Resource Conservation .....	32
38.	Compliance with Americans with Disabilities Act .....	32
39.	Sunshine Ordinance .....	32
40.	Left Blank by Agreement of the Parties .....	32
41.	Limitations on Contributions .....	32
42.	Requiring Minimum Compensation for Covered Employees .....	32
43.	Left Blank by Agreement of Parties .....	34
44.	First Source Hiring Program .....	34
44.1.	Incorporation of Administrative Code Provisions by Reference .....	34

44.2.	First Source Hiring Agreement .....	34
44.3.	Hiring Decisions .....	35
44.4.	Exceptions .....	35
44.5.	Liquidated Damages .....	35
44.6.	Subcontracts .....	36
45.	Prohibition on Political Activity with City Funds .....	36
46.	Preservative-treated Wood Containing Arsenic.....	36
47.	Modification of Agreement.....	37
48.	Administrative Remedy for Agreement Interpretation .....	37
49.	Agreement Made in California; Venue .....	37
50.	Construction .....	37
51.	Entire Agreement .....	37
52.	Compliance with Laws .....	37
53.	Services Provided by Attorneys.....	37
54.	Left blank by agreement of the parties .....	38
55.	Severability .....	38
56.	Protection of Private Information .....	38
57.	Graffiti Removal .....	38
58.	Food Service Waste Reduction Requirements.....	39
59.	Cooperative Drafting .....	39
60.	Contingent Fees .....	39
61.	Dispute Resolution.....	39
62.	Safety .....	40
63.	Debarment and Suspension Certification.....	40
64.	Prohibition of Expending Local Agency State or Federal Funds for Lobbying.....	40
65.	City Provisions.....	41
66.	Counterparts .....	41
66.1.	SF Environment .....	2
66.2.	Taxi Companies .....	2
66.3.	City CarShare.....	2
66.4.	California ISO (CAISO) .....	2
66.5.	Plug In America (PIA) .....	2
66.6.	BAAQMD.....	2

## **PUBLIC PRIVATE PARTNERSHIP AGREEMENT**

### **BETWEEN**

### **THE CITY AND COUNTY OF SAN FRANCISCO, THROUGH ITS MUNICIPAL TRANSPORTATION AGENCY, BETTER PLACE MOBILITY SERVICES, INC., AND THE CITY OF SAN JOSE**

This Agreement, dated the \_\_\_ day of May, 2012, is between the City and County of San Francisco (City), a municipal corporation, by and through its Municipal Transportation Agency (SFMTA), Better Place Mobility Services Inc., a Delaware corporation (Better Place), and the City of San José (San José), a municipal corporation of the State of California (individually, a "Party," or collectively, the "Parties").

### **RECITALS**

**A.** Better Place has developed innovative, proprietary technology to support electric vehicles (EVs), including battery switch stations that use a robotic system to switch new batteries for depleted ones, and cool and charge the batteries in inventory – to ensure that an EV receives a fully charged battery each time the vehicle arrives at a station.

**B.** The City, through the SFMTA has applied for a grant of \$6,988,000 in Congestion Mitigation and Air Quality (CMAQ) Improvement funds administered by the Federal Highway Administration (FHWA) of the U.S. Department of Transportation through the California Department of Transportation (Caltrans). Six million dollars of the CMAQ funds will be used for this Project, in partnership with Better Place and San José, and \$988,000 of the CMAQ funds will be used for a proposed Neighborhood Taxi Program.

**C.** The CMAQ funds, supplemented by local matching funds or eligible non-monetary activities, will be used for the Bay Area Electric Vehicle Taxi Corridor Program (the "Program"), a component of the Metropolitan Transportation Commission's Climate Initiatives Program. The Program intends to operate a network of zero-emission "battery-switchable" EVs in taxi fleets in San Francisco and San José, with four battery switch stations developed by Better Place – in San Francisco (including at San Francisco International Airport) and in San José – along with grid support services and consumer education. It is projected that the Program will reduce greenhouse gas emissions by approximately 700,000 tons annually.

**D.** The federal CMAQ legislation (23 USC § 149(e)) encourages public private partnerships to cooperatively implement any project carried out with CMAQ funds that is not otherwise an obligation imposed under the Clean Air Act or any other federal law.

**E.** FHWA requires a legally binding written agreement between the public agency sponsor and the private partner before a CMAQ-funded project may be implemented. The parties intend that this Agreement will specify the intended use for CMAQ funding, the roles and responsibilities of the Parties, and the disposition of property in the event of material changes in structure of the Agreement.

Now, therefore, the Parties agree as follows:

#### **1. Definitions**

**1.1. Agreement.** This Agreement, including all attachments to the Agreement and all amendments made in accordance with the provisions of the Agreement.

**1.2. Battery Switch Station.** A facility for EVs that uses a robotic system to switch new batteries for depleted ones, and cool and charge the batteries in inventory – to ensure that an EV receives a fully charged battery each time the vehicle arrives at the station. The term "Battery Switch Station" includes all materials, components and equipment used in the fabrication and construction of the Battery Switch Station.

**1.3. Bay Area Air Quality Management District; BAAQMD.** The public agency entrusted with regulating sources of air pollution in the nine counties that surround San Francisco Bay.

**1.4. Bay Area Electric Vehicle Taxi Corridor Program; Program.** A climate initiatives program for the operation of a network of zero-emission "battery-switchable" EVs in taxi fleets in San Francisco and San José, to include four battery switch stations developed by Better Place –in San Francisco (including at San Francisco International Airport) and in San José, along with grid support services and consumer education, as further described in this Agreement.

**1.5. Bovis Lend Lease.** Bovis Lend Lease Holdings, Inc., a corporation authorized to do business in California, which will be working with Better Place to provide architectural, engineering, design and construction management services for the Program.

**1.6. California Department of Transportation; Caltrans.** The California State agency which is a direct recipient of the FHWA Grant and which will be providing the FHWA Grant to SFMTA, as a subrecipient.

**1.7. City.** The City and County of San Francisco, a municipal corporation. The rights of City in this Agreement inure to the benefit of the City and County of San Francisco and all of its constituent departments. However, except as otherwise expressly provided herein, the powers and duties to be exercised by City pursuant to this Agreement shall be exercised by SFMTA by and through the Director of Transportation.

**1.8. Director of Transportation.** The Director of Transportation of the SFMTA, or his or her designee.

**1.9. Electric Vehicle; EV.** A ground vehicle propelled by a motor powered by electrical energy from switchable rechargeable batteries onboard the vehicle.

**1.10. Federal Highway Administration; FHWA.** An operating administration of the U.S. Department of Transportation.

**1.11. FHWA Grant.** The grant of \$6,000,000 in Congestion Mitigation Air Quality Improvement (CMAQ) funds from FHWA.

**1.12. Force Majeure Event.** An inability for any Party to perform under this Agreement that the Party demonstrates could not have been avoided by the Party's exercise of due care, prudence, foresight, or diligence and that arises directly from: an act of God; fire; flood; windstorm; tornado; earthquake; war; riot; insurrection; epidemic; quarantine restrictions; acts of terrorism; inability of the Party, its suppliers, or subcontractors to procure labor; freight embargo; accident; 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; the prevention by the one Party of the other Party from commencing or prosecuting any of its duties under the Agreement; inability of a Party to obtain applicable permits and licenses from relevant governmental authorities; change of law that prevents implementation of the Program; a judgment, order, or decree issued by a court preventing implementation of the Program; or failure of public utility service outside the control of the Party.

**1.13. Program.** The Bay Area Electric Vehicle Taxi Corridor Program, which is intended to involve the operation of a network of zero-emission EVs in taxi fleets in San Francisco and San José, with four battery switch stations developed by Better Place –in San Francisco (including at San Francisco International Airport) and in San José – along with grid support services and consumer education.

**1.14. San Francisco Municipal Transportation Agency; SFMTA.** The Municipal Transportation Agency, an agency of the City and County of San Francisco established by San Francisco Charter Article VIII A, or any successor agency.

**1.15. San José.** The City of San José, a municipal corporation in the State of California.

**1.16. SF Environment.** The City's Department of the Environment.

**1.17. Taxi Companies.** Those SFMTA color scheme permit holders that agree to participate in the Program and those taxicabs permitted under the San José Municipal Code who are approved by San José and agree to participate in the Program under a separate written agreement with Better Place.

**1.18. Useful Life.** The economic life of a Battery Switch Station, which shall be the earlier of nine years from its installation or whenever the Battery Switch Station has performed 100,000 battery switches.

## **2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.**

This Agreement is subject to the applicable budget and fiscal provisions of the City's and San José's Charter. Charges will accrue only after prior written authorization certified by the City's Controller or appropriated by the San José City Council, and the amount of City's and San José'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 and San José 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 and San José have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City and San José budget decisions are subject to the discretion of the Mayor, Board of Supervisors, and San José City Council, as applicable. Better Place's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. Notwithstanding the above, the FHWA Grant is not subject to appropriation by the Board of Supervisors.

THIS SECTION 2 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

## **3. Term of the Agreement.**

Subject to Section 2, the term of this Agreement shall be 10 years from the Effective Date.

## **4. Effective Date of Agreement.**

This Agreement shall become effective upon issuance of a Notice to Proceed by the SFMTA.

## **5. Program Phases.**

**5.1. Phase 1.** Phase 1 of the Program is intended to deploy one Battery Switch Station in San Francisco and one Battery Switch Station in either San Francisco, San Francisco International Airport, or San José, along with the procurement of six EVs

**5.2. Phase 2.** Phase 2 of the Program is intended to deploy two more Battery Switch Station in San Francisco, San Francisco International Airport, or San José, along with the procurement of 55 EVs. Phase 2 will be commenced upon completion of Phase 1.

**5.3. Reassessment of Scope.** Upon completion of Phase 1, the Parties will review the progress of the Project to determine whether the scope of Phase 2 should be revised. No such modification shall take effect without (a) the mutual agreement of the Parties in writing as provided under Section 47, and (b) the approval, if required, by the FHWA, Caltrans, the Metropolitan Transportation Commission, and other granting agencies. If the parties fail to agree on such modification within a reasonable period of time, the Parties' obligations with respect to Phase 2 of this Agreement shall cease, however, all other obligations of the Parties with respect to this Agreement shall remain in effect.

## **6. Roles and Responsibilities of Parties.**

**6.1. Better Place.** Better Place will design, procure all equipment and vehicles, build, operate, maintain and provide substantial financing for the Program. The Better Place team includes Bovis Lend Lease, which will provide architectural, engineering, design and construction management services for procurement and installation of the Battery Switch Stations.

**6.1.1. Design.** Better Place will provide all architectural, engineering and design services required to procure and install the Battery Switch Stations at the locations selected and approved by the City and San José, if any, subject to the terms and conditions of Section 6.3. This shall include preparation of all design documents, plans, specifications and drawings required for bidding purposes.

**6.1.2. Environmental Review in San José.** In the event that San José, at its sole discretion, secures a site for the Battery Switch Station(s) and elects to participate in the Program, Better Place shall be responsible, at Better Place's sole cost and expense, to obtain approvals to ensure that the selected site(s) in San José for the Battery Switch Station(s), if any, complies with the provisions of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), San José Municipal Code, and applicable rules and regulations for the Program.

**6.1.3. Leases, Licenses, Permits, and Approvals.** Better Place, at its sole cost and expense, shall obtain and secure all required leases, license, permits, and approvals, including all planning, building, and City's and San José's required approvals for the development of the Battery Switch Stations.

### **6.1.4. Procurement.**

**(a) Battery Switch Stations.** Better Place will be responsible for procuring all components and equipment required for the Battery Switch Stations. Better Place certifies that it will procure such components and equipment consistent with the requirements of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and the Caltrans Local Assistance Manual.

**(b) EVs.** Better Place will be responsible for procuring all EVs required for the Program with non-federal funds. Better Place agrees to provide any EV that is to be used as a taxi only to those San Francisco taxi permit holders that have been approved by SFMTA to participate in the Program or San José taxi permit holders approved by San José to participate in the Program. Better Place shall use all taxi revenue it obtains from the Program to offset Program costs. Better Place may require, by contract with the City Taxi Companies, that a negotiated percentage of all taxi revenue earned from the gate fees charged by City Taxi Companies participating in the Program (estimated at \$2,000,000), be allocated to Better Place during the term of the Agreement.

**6.1.5. Construction.** Better Place will be responsible for bidding out, administering, and managing the construction of the Battery Switch Stations. As part of its construction management duties, Better Place shall staff the construction with a resident engineer to provide oversight and quality assurance. Better Place certifies that it will procure construction services as necessary for the Program and maintain Program files consistent with the requirements of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and the Caltrans Local Assistance Manual, including, but not limited to, ensuring full and open competition, procurement by sealed bids, implementation of DBE requirements, and including all state and federal contract provisions. All construction located in San José shall comply with the written ground lease agreement between San José and Better Place.

**6.1.6. Operation of Battery Switch Stations.** Better Place will be responsible for operation of the Battery Switch Stations for the term of this Agreement in compliance with applicable requirements of federal, state and local laws and any applicable written lease agreements with San José or City.

**6.1.7. Maintenance.** Better Place will be responsible for maintaining the Battery Switch Stations and EVs in good working order for the term of this Agreement and in compliance with applicable requirements of federal, state and local laws and any applicable written lease agreements with San José or City. In the event that Better Place leases the EVs to one or more Taxi Companies for the duration of the Program, Better Place shall ensure that the Taxi Companies maintain the EV taxis they lease in compliance with this provision.

**6.1.8. Environmental Review.** Better Place will be responsible for working with the City's Planning Department to ensure that the Program, including the selected sites for the Battery Switch Stations, complies with the provisions of the California Environmental Quality Act (CEQA) and with applicable provisions of the City's Planning Code; and with Caltrans to ensure that the Program complies with the provisions of the National Environmental Policy Act (NEPA).

**6.1.9. Marketing; Outreach Activities.** Better Place will conduct marketing and outreach to educate the public about the Program, in cooperation with federal and regional granting agencies. Such marketing and outreach efforts shall include the following:

(a) Outfitting or "wrapping" of the EV taxis with highly visible and attractive designs to focus customer attention on them and to advertise that they are zero-emission vehicles, subject to applicable City's and San José's ordinances and policies;

(b) Providing consumer education materials about the EV taxis;

(c) Selecting and training EV taxi drivers to serve as "EV Ambassadors;"

(d) Developing and providing educational materials for distribution at the Battery Switch Stations;

(e) Deploying an EV education center, which will include marketing and education elements such as video screens, live "feeds" from a Battery Switch Station, educational materials, and information on how to purchase or lease an EV.

**6.1.10. Site Leases.** Subject to Section 6.3 and San José's participation in the Program, Better Place shall enter into the necessary written ground lease agreements with City or San José, as appropriate, to obtain sites that are suitable for the Battery Switch Stations. Such lease agreements may be subject to review by Caltrans and FHWA prior to construction authorization.

**6.1.11. Other Grants.** Better Place will administer a grant in the amount of \$450,000 from the Bay Area Air Quality Management District to be used for the Program.

Better Place will also apply for and administer a grant in the amount of \$100,000 from SF Environment.

**6.1.12. Grid Services Demonstration.** Better Place will prepare a grid services demonstration, which will show the potential of the Battery Switch Station to deliver unused electricity to the electric grid and/or electricity market in California.

**6.1.13. Procurement Reporting Requirements.** Better Place will provide a list to City and San José of all procurements planned that will be funded in whole or in part by the FHWA Grant. Additionally, Better Place will provide SFMTA and San José with a monthly report on the status of such procurements.

**6.1.14. Documentation of Emissions Savings.** Better Place shall monitor emissions savings resulting from the Program and provide documentation to the SFMTA and San José, on a quarterly basis, of the results of said monitoring. Better Place shall use a formula acceptable to the FHWA for purposes of said monitoring.

**6.1.15. Staffing.** Better Place will provide the following staff to support the Program:

(a) Program Manager. The Program Manager will guide and oversee the delivery of Better Place's Program commitments by working with multiple stakeholders and project teams.

(b) Deployment Manager. The Deployment Manager will oversee the site acquisition, design and deployment of all Battery Switch Stations under the Program.

(c) Contracts Manager. The Contracts Manager will oversee the development of and Better Place's compliance with all provisions of contracts executed for the Program.

(d) Marketing/Vehicle Operations Manager. The Marketing/Vehicle Operations Manager will develop, execute and oversee the Program's marketing plan and vehicle operations plan in partnership with Program participants and stakeholders.

(e) Solution Manager. The Solution Manager will ensure comprehensive definition, design, and development of the Program's solution elements (e.g., battery switch stations, vehicle operations, batteries, software/network operations elements).

**6.1.16. Merchandising.** Better Place agrees to cooperate with the SFMTA or its merchandising contractor for purposes of merchandising and selling products to the public relating to the Program.

**6.2. SFMTA.** SFMTA's Program responsibilities are as follows:

**6.2.1. Project Sponsor.** As the subrecipient of the FHWA Grant from Caltrans, SFMTA will serve as the Project Sponsor and lead public partner for the Program.

**6.2.2. Disbursement of Grant Funds.** SFMTA will disburse funds to Better Place's account as costs are incurred, subject to (1) adequate documentation of costs incurred, (2) compliance with the terms and conditions of the FHWA Grant requirements and this Agreement, and (3) compliance with Better Place's responsibilities, as set forth above in Section 6.1.

**6.2.3. Administrative Services.** SFMTA will provide required administrative services to the Program in connection with the FHWA Grant. These services may include, but not be limited to, accounting services, financial services, contract administration, grants administration, services of its Contract Compliance Office, including administration of DBE matters, legal services, and other administrative services. SFMTA staff, after consultation with Better Place and San José, will be responsible for preparing procedures to implement the provisions of this Agreement. The procedures will include processes for billing, accounting, encumbrance and disbursement of funds, tracking of time, and other such functions.

**6.2.4. Grant Manager.** SFMTA will designate one individual to be its Grant Manager for all activities involving the FHWA Grant. The Grant Manager's primary responsibility will be to ensure compliance with all requirements of the FHWA Grant, and will provide counsel and advice to Better Place on grant issues, City contracting policies, and federal regulations. The Grant Manager may enlist and utilize other SFMTA resources or staff personnel as necessary to carry out such work and perform the administrative services described in Section 6.2.3 above. The Grant Manager will also be responsible for evaluating and compiling Program data for reporting to MTC, Caltrans and/or FHWA, as required.

**6.2.5. Program Manager** SFMTA will designate one individual to be its Program Manager for all activities involving the Program, other than the FHWA Grant. The Program Manager's primary responsibility will be to provide guidance and oversight regarding City/SFMTA policy matters involving the Program, the SFMTA taxi program, and the EVs.

**6.2.6. Site Selection.** SFMTA will work with the City's Real Estate Division, Airport, and Department of Public Works, as required, to secure sites that are suitable for the Battery Switch Stations.

**6.2.7. Monitoring of Construction Activities.** SFMTA shall monitor the construction activities of Better Place in San Francisco to ensure that Better Place procures goods and services as necessary for the Program consistent with the requirements of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and the Caltrans Local Assistance Manual. Additionally, SFMTA will ensure that procurements comply with the federal Disadvantaged Business Enterprise requirements, in conformity with the Caltrans DBE Program.

**6.2.8. Public Notice.** SFMTA will work with Better Place to respond to any public comments regarding the Program and to prepare required presentations for public meetings in San Francisco.

**6.2.9. Taxi Regulation.** SFMTA will require all taxis participating in the Program to be driven under taxi permits issued by the SFMTA. SFMTA will use best efforts to ensure that there are permits available for the EVs, and, if necessary, work with Better Place to create a meter and gate fee structure that meets the needs of the parties under the Program.

**6.3. San José.** A portion of the FHWA Grant may be used to construct Battery Switch Stations in San José. In the event that San José participates in the Program, San José will be responsible for compliance with all applicable laws, regulations and guidance associated with acceptance and expenditure of the FHWA Grant, using sound management practices. San José's participation in the Program is subject to each of the following: (i) San José, at its sole discretion, locating property(ies) within the limits of San José that is suitable for the Battery Switch Station(s), (ii) San José and Better Place mutually entering into a written ground lease agreement setting forth the terms, conditions, and obligations for the construction, operation, and maintenance of the Battery Switch Station(s), and (iii) Better Place obtaining all required environmental clearance prior to the execution of such written ground lease agreement. Subject to the above, San José's Program responsibilities will be as follows:

**6.3.1. Program Manager.** San José will designate one individual to be its Program Manager for all activities involving the Program. The Program Manager's primary responsibility will be to provide guidance and oversight regarding San José, policy, rules, regulations, and ordinances that may govern the Program in San José, taxi service in San José, and the EVs to be located in San José.

**6.3.2. Monitoring of Construction Activities.** San José shall monitor the construction activities of Better Place in San José to ensure that Better Place procures goods and services as necessary for the Program consistent with the requirements of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and the Caltrans Local Assistance Manual. Additionally, San José will

ensure that procurements comply with the federal Disadvantaged Business Enterprise requirements, in conformity with the Caltrans DBE Program. SFMTA reserves the right to review and advise on any such procurement, or portion of a procurement.

**6.3.3. Review of Invoices.** San José shall review all invoices submitted by Better Place for work on the Battery Switch Stations in San José and shall advise SFMTA whether said invoices are acceptable, in whole or in part, for payment with FHWA Grant funds. San José shall provide SFMTA with its recommendations for payment within one week of receipt of the invoice.

**6.3.4. Reports.** San José will provide SFMTA with all required quarterly narrative and financial reports within 15 calendar days after each reporting period. The reporting periods will end December 31, March 31, June 30 and September 30. Narrative reports will contain the following information: a description of the work completed during the period; tasks expected to be performed during the next period; major project milestones, changes to milestones, and reasons for the changes; and explanations of problems or delays encountered or anticipated. Financial reports will include a balance sheet and a project expenditure statement by line item code.

**6.3.5. Recordkeeping.** Unless otherwise directed by SFMTA, San José will maintain records of all procurements and contract expenses for work performed in San José in the form required by federal regulations and FHWA grant requirements during the term of this Agreement, and for a period of three years thereafter. San José will allow SFMTA to review and inspect said records during business hours to ensure compliance with such requirements, and to audit the books, records, and accounts of San José and its contractors, if necessary. Upon request, San José will provide SFMTA with copies of any records in its files relating to procurements and other expenditures using funding from the FHWA Grant. San José agrees to extend these rights of review, inspection and audit to Caltrans, the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives

**6.3.6. Site Selection.** San José will work with its Real Estate Division, Airport, and Department of Public Works to attempt to secure site(s) that are suitable for the Battery Switch Station(s). As set forth in Section 6.3, nothing stated herein in this Agreement shall obligate or require San José to secure any site for a Battery Switch Station or obligate or require San José to participate in the Program.

**6.3.7. Environmental Review.** In accordance with its obligations under law, San José will be responsible for reviewing environmental documents submitted by Better Place to ensure that the selected sites in San José for the Battery Switch Stations, comply with the provisions of the California Environmental Quality Act (CEQA) and with applicable provisions of San José's Planning Code; and consult with Caltrans as necessary to ensure that the Program complies with the provisions of the National Environmental Policy Act (NEPA).

**6.3.8. Public Notice.** San José will work with Better Place to respond to any public comments regarding the Program and to prepare required presentations for public meetings in the San José area.

**6.3.9. Taxi Regulation.** San José will require all taxis participating in the Program to be driven under taxi permits issued by San José. San José will work with the San José Taxi Companies to integrate the EVs into their existing taxi fleets. San José will authorize the use of the EVs as San José taxicabs with the same meter and gate fee structure that is in place for all other San José taxis that are similarly operated under the same conditions, unless authorized otherwise by the City Council.

**6.3.10. Ground Lease(s).** San José shall ensure that any ground lease(s) it enters into with Better Place contains provisions requiring Better Place to provide collateral (e.g., bond, letter of credit) in the event that Better Place is required to remove the Battery Switch Station(s) from the premises following the expiration of the term of the ground lease or its earlier

termination as a result of a Better Place default. San José shall ensure that City is made a beneficiary to such collateral in addition to San José so that City may have the opportunity to enforce the obligation if San José does not do so for any reason, subject to Section 21.4.5 and the conditions set forth in Section 26.2.1.

## **7. Other Program Participants.**

The entities that will be providing funding or in-kind contributions to the Program are listed in Exhibit B.

## **8. Payments; Cost Principles.**

**8.1. Amount of Contract.** In no event shall the costs to be reimbursed to Better Place under this Agreement exceed Six Million Dollars (\$6,000,000). A breakdown of the funding associated with this Program is listed in Exhibit A, which may be modified from time to time with the consent of all Parties and FHWA, as required.

**8.2. Payment.** Payments of grant funds for reimbursement of allowable costs for the Battery Switch Stations under this Agreement shall be made no more often than monthly on or before the 30th day of each month for work, as set forth in Section 5 of this Agreement, that the Manager, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. Such costs will be reimbursed at a rate of 88.53% (for example, if Better Place submits an invoice in the amount of \$100 for allowable costs for work performed as of August 30, then Better Place will receive a reimbursement payment of \$88.53 on or before September 30). City shall make payment to Better Place at the address specified in the Section entitled "Notices to the Parties." No charges shall be incurred under this Agreement nor shall any payments become due to Better Place until invoices, reports, services, or both, required under this Agreement are received from Better Place and approved by SFMTA as being in accordance with this Agreement. City may withhold payment to Better Place in any instance in which Better Place has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

### **8.3. Cost Principles.**

**8.3.1.** Better Place agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.

**8.3.2.** Better Place also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

**8.3.3.** Any costs for which payment has been made to Better Place that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Better Place to the City.

## **9. Guaranteed Maximum Costs.**

The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse Better Place for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make

payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

#### **10. Submitting False Claims; Monetary Penalties.**

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

#### **11. Disallowance.**

If Better Place claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Better Place, as required, shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Better Place under this Agreement or any other Agreement. By executing this Agreement, Better Place certifies that they are not suspended, debarred or otherwise excluded from participation in federal assistance programs. Better Place acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

#### **12. Taxes.**

**12.1. Obligation.** Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Better Place.

**12.2. Possessory Interest Taxes.** Better Place recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Better Place to possession, occupancy, or use of municipal property for a private gain. If such a possessory interest is created, then the following shall apply:

**12.2.1.** Better Place, on behalf of itself and any permitted successors and assigns, recognizes and understands that Better Place, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

**12.2.2.** Better Place, 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. Better Place accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of San José or 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.

**12.2.3.** Better Place, 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). Better Place 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.

**12.2.4.** Better Place further agrees to provide such other information as may be requested by the City or San José to enable the City or San José to comply with any reporting requirements for possessory interests that are imposed by applicable law.

### **13. Independent Contractor; Payment of Taxes and Other Expenses.**

**13.1. Independent Contractor.** Better Place or any agent or employee of Better Place 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 San José or the City under this Agreement. Better Place or any agent or employee of Better Place shall not have employee status with San José or the City, nor be entitled to participate in any plans, arrangements, or distributions by San José or the City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Better Place or any agent or employee of Better Place is liable for the acts and omissions of itself, its employees and its agents. Better Place 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 Better Place's performing services and work, or any agent or employee of Better Place providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City, San José and Better Place or any agent or employee of Better Place. Any terms in this Agreement referring to direction from City or San José shall be construed as providing for direction as to policy and the result of Better Place's work only, and not as to the means by which such a result is obtained. City and San José do not retain the right to control the means or the method by which Better Place performs work under this Agreement.

**13.2. Payment of Taxes and Other Expenses.** Should City or San José, in their discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Better Place 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 Better Place which can be applied against this liability). City and San José shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Better Place for City or San José, upon notification of such fact by City or San José, Better Place shall promptly remit such amount due or arrange with City or San José to have the amount due withheld from future payments to Better Place under this Agreement (again, offsetting any amounts already paid by Better Place which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Better Place shall not be considered an employee of City or San José. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Better Place is an employee for any other purpose, then Better Place agrees to a reduction in City and San José's financial liability so that City and San José's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Better Place was not an employee.

### **14. Insurance.**

**14.1.** Without in any way limiting Better Place's liability pursuant to the "Indemnification" section of this Agreement, Better Place must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

**14.1.2.** Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

**14.1.3.** Commercial Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

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

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

**14.2.1.** Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees and City of San José, its officers, agents, and employees.

**14.2.2.** That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

**14.3.** Regarding Workers' Compensation, Better Place hereby agrees to waive subrogation which any insurer of Better Place may acquire from Better Place by virtue of the payment of any loss. Better Place agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City and San José for all work performed by the Better Place, its employees, agents and subcontractors.

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

**14.5.** Should any of the required insurance be provided under a claims-made form, Better Place shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

**14.6.** 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.

**14.7.** 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 and San José receive satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City or San José may, at their sole option, terminate this Agreement effective on the date of such lapse of insurance.

**14.8.** Before commencing any operations under this Agreement, Better Place shall furnish to City and San José certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in

the State of California, and that are satisfactory to City and San José, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

**14.9.** Approval of the insurance by City and San José shall not relieve or decrease the liability of Better Place hereunder.

**14.10.** If a subcontractor will be used to complete any portion of this Agreement, Better Place shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and City of San José, its officers, agents and employees, and the Better Place listed as additional insureds.

## **15. Indemnification.**

a. Better Place shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Better Place or loss of or damage to property, arising directly or indirectly from Better Place's performance of this Agreement, including, but not limited to, Better Place's use of facilities or equipment provided by City or others, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the negligence or willful misconduct of City. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Better Place's obligation to indemnify City, Better Place 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 Better Place by City and continues at all times thereafter.

Better Place shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

b. Better Place shall indemnify and save harmless San José and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Better Place or loss of or damage to property, arising directly or indirectly from Better Place's performance of this Agreement, including, but not limited to, Better Place's use of facilities or equipment provided by San José or others, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the negligence or willful misconduct of San José. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and San José's costs of investigating any claims against San José.

In addition to Better Place's obligation to indemnify San José, Better Place specifically acknowledges and agrees that it has an immediate and independent obligation to defend San José 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 Better Place by San José and continues at all times thereafter.

Better Place shall indemnify and hold San José harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the

patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by San José, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

**16. Incidental and Consequential Damages.**

Except with respect to its obligations to indemnify under Section 15, in no event shall Better Place be liable, regardless of whether any claim is based on contract or tort, for any special, incidental, consequential, indirect or incidental damages, including but not limited to, lost profits, resulting in whole or in part from Better Place's acts or omissions. Except as expressly stated above, nothing in this Agreement shall constitute a waiver or limitation of any rights that City or San José may have under applicable law.

**17. Liability of City and San José.**

a. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE FUNDS PROVIDED FOR IN SECTION 8 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

b. SAN JOSE'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF FUNDS PROVIDED FOR IN SECTION 8 OF THIS AGREEMENT USED SOLELY FOR THE CONSTRUCTION OF THE BATTERY SWITCH STATION IN SAN JOSE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL SAN JOSE 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.

**18. Default .**

**18.1. Better Place Default.** Each of the following shall constitute a default by Better Place (Better Place Default) under this Agreement:

**18.1.1. Failure to Perform Program Duties.** Better Place fails to diligently execute the tasks necessary to perform its Program responsibilities under Section 6.1, and such default continues for a period of 30 days after written notice thereof from City to Better Place, or from San José to Better Place, or if the failure or breach cannot be cured within such 30-day period, such longer period as is necessary to cure the failure or breach so long as Better Place commences the cure within such 30- day period and diligently prosecutes such cure to completion.

**18.1.2. Failure to Perform Other Covenants.** Better Place fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of 45 days after written notice thereof from City to Better Place or from San José to Better Place.

**18.1.3. Public Welfare.** The cure periods set forth in Sections 18.1.1 and 18.1.2 above may be abrogated in the event that City, or San José, as applicable, determines that any Better Place Default warrants immediate action on the part of the City or San José to preserve the public health, safety, or welfare,

**18.1.4. Voluntary Insolvency.** Better Place (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Better Place or of any substantial part of Better Place's property or (e) takes action for the purpose of any of the foregoing.

**18.1.5. Involuntary Insolvency.** A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Better Place or with respect to any substantial part of Better Place's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Better Place.

**18.1.6. No Default.** For the purposes of this Section 18.1, each of the following shall not constitute a Better Place Default:

(a) Where Better Place's failure to perform any term, covenant or condition results from or is caused by a City Default.

(b) Where Better Place's failure to perform any term, covenant or condition directly results from or is caused by City's failure to perform any other term, covenants or condition contained in the Agreement.

(c) Where Better Place's failure to perform any term, covenant or condition results from or is caused by a San José Default.

(d) Where Better Place's failure to perform any term, covenant or condition directly results from or is caused by San José's failure to perform any other term, covenants or condition contained in the Agreement.

(e) Where Better Place's failure to perform any term, covenant or condition results from or is caused by the failure to obtain sites suitable for the Battery Switch Stations at below market rate in the City.

(f) Where Better Place's failure to perform any term, covenant, or condition results from or is caused by a Force Majeure Event.

**18.2. City Default.** Each of the following shall constitute a default by City (City Default) under this Agreement:

**18.2.1. Failure to Disburse Funds.** City fails to perform its Program responsibilities under Section 6.2.2, and such default continues for a period of 30 days after written notice thereof from Better Place to City.

**18.2.2. Failure to Comply with Applicable Laws.** City fails to perform or breaches any federal, state or local law or regulation applicable to this Agreement.

**18.2.3. Voluntary Insolvency.** City (a) 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, (b) makes an assignment for the benefit of its creditors, (c) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of City or of any substantial part of City's property or (d) takes action for the purpose of any of the foregoing.

**18.2.4. Involuntary Insolvency.** A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to City or with respect to any substantial part of City's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of City.

**18.2.5. No Default.** For the purposes of this Section 18.2, each of the following shall not constitute a City Default:

(a) Where City's failure to perform under Section 6.2.2 results from or is caused by Better Place's failure to perform any other term, covenants or condition contained in the Agreement.

(b) Where City's failure to perform under Section 6.2.2 results from an action by San José, or by FHWA, Caltrans or other granting agency.

(c) Where City's failure to perform any term, covenant, or condition results from or is caused by a Force Majeure Event.

**18.3. San José Default.** Subject to Section 6.3 and San José's election to participate in the Program, each of the following shall constitute a default by San José (San José Default) under this Agreement:

**18.3.1. Failure to Comply with Applicable Laws.** San José fails to perform or breaches any federal, state or local law or regulation applicable to this Agreement.

**18.3.2. Failure to Perform Other Covenants.** San José fails to perform or breaches any other agreement or covenant of this Agreement to be performed or observed by San José, as applicable, as and when performance or observance is due and such failure or breach continues for a period of 30 days after the defaulting party's receipt of written notice of such failure or breach or, if the failure or breach cannot be cured within such 30-day period, such longer period as is necessary to cure the failure or breach so long as San José commences the cure within such 30- day period and diligently prosecutes such cure to completion.

**18.3.3. Voluntary Insolvency.** San José (a) 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, (b) makes an assignment for the benefit of its creditors, (c) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Better Place or of any substantial part of Better Place's property or (d) takes action for the purpose of any of the foregoing.

**18.3.4. Involuntary Insolvency.** A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to San José or with respect to any substantial part of San José's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of San José.

**18.3.5. No San José Default.** For the purposes of this Section 18.3, each of the following shall not constitute a San José Default:

(a) Where San José's failure to perform any term, covenant or condition results from or is caused by a City Default.

(b) Where San José's failure to perform any term, covenant or condition results from or is caused by a Better Place Default.

(c) Where San José's failure to perform any term, covenant or condition directly results from or is caused by Better Place's failure to perform any other term, covenants or condition contained in the Agreement.

(d) Where San José's failure to perform under Section 6.3 results from an action by FHWA, Caltrans or other granting agency.

(e) Where San José's failure to perform any term, covenant, or condition results from or is caused by a Force Majeure Event.

## **19. Force Majeure Events.**

**19.1. No Liability.** Neither Party shall be liable for failure to perform its obligations under this Agreement to the extent such failure to perform is caused by a Force Majeure Event. In the case of a Force Majeure Event, the affected Party shall:

**19.1.1.** Within 10 days of the Force Majeure Event, notify the other Party of the Force Majeure Event and demonstrate that the Force Majeure Event caused the failure to perform;

**19.1.2.** Take all reasonable steps to minimize delay or damages caused by foreseeable events;

**19.1.3.** Fulfill all non-excused obligations; and

**19.1.4.** Resume performance as soon as practicable.

**19.2. Optional Termination.** If a Force Majeure Event inhibits the affected Party's performance for more than a period of 90 days, either Party may (i) require the other Party to renegotiate in good faith the terms of this Agreement related to the execution of the Program, or (ii) terminate this Agreement subject to Section 21.

## **20. Remedies Upon Default.**

**20.1. Better Place Default.** In the event of a Better Place Default:

**20.1.1. Termination.** City or San José, as applicable, 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 the event of termination, Better Place shall cease operating the Battery Switch Stations, remove all equipment and materials from the site(s), and restore the site(s) to the condition they were in prior to installation of the Battery Switch Stations. Notwithstanding the above, San José's right to terminate the Agreement shall only be applicable to activities conducted by Better Place in San José. In the event of such a termination, and if requested by FHWA, Better Place shall be responsible for repaying to the City or FHWA, as appropriate, the remaining value, if any, of the federal interest in the Battery Switch Station(s) that have been removed from the site(s), whether in the City or in San José. Such value shall be based on a straight-line depreciation of a Battery Switch Station over its Useful Life.

**20.1.2. Right to Cure.** City or San José, as applicable, shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Better Place any Better Place Default; Better Place shall pay to City or San José, as applicable, on demand all costs and expenses incurred by City or San José in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law.

**20.1.3. Withholding of Grant Funds.** City may withhold all or any portion of Grant funds not yet disbursed, regardless of whether Better Place has previously submitted a request for such funds or whether City has approved the disbursement of the FHWA Grant funds under a prior request for such funds. Any Grant funds withheld pursuant to this Section and subsequently disbursed to Better Place after cure of the applicable Better Place Default will be disbursed without interest.

**20.2. City Default.** In the event of a City Default, Better Place or San José shall have the right to exercise their legal and equitable remedies, including, without limitation, the right to terminate this Agreement. Under no circumstances shall City's liability to Better Place or San José for default exceed the amount specified in Section 8.1, less amounts previously paid to Better Place.

**20.3. San José Default.** In the event of a San José Default, the City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement as to San José. If the Agreement is terminated prior to construction of all planned Battery Switch Stations in the San José area, no further Battery Switch Stations will be located in the San José area. Under no circumstances shall San José's liability under this Agreement for default exceed the amount specified in Section 17.

**20.4. Exercise of Remedies.** All remedies provided for in this Section 20 may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

## **21. Termination for Convenience.**

**21.1. San José.** San José shall have the option, in its sole discretion, to terminate this Agreement as to its participation in the Program, for convenience and without cause, at any time prior to entering into a fully executed written ground lease agreement with Better Place for the construction of any Battery Switch Station to be located in San José under the Program. San José shall exercise this option by giving the other Parties at least thirty (30) days written notice of termination. The notice shall specify the date on which termination shall become effective. Any termination by San José after entering into a fully written ground lease agreement with Better Place shall be governed by the provisions of the ground lease for the Battery Switch Station.

**21.2. City.** City shall have the option, in its sole discretion, to terminate this Agreement, at any time during its term, for convenience and without cause. City shall exercise this option by giving the Parties at least 90 days written notice of termination. The notice shall specify the date on which termination shall become effective.

**21.3. Duties of Better Place.** Upon receipt of the notice from City, Better Place may either, with the prior approval of the City, which approval shall not be unreasonably withheld:

**21.3.1.** Continue to operate and maintain the Battery Switch Stations in the City for the remainder of their Useful Life, without further assistance from the City; or

**21.3.2.** Cease operating the Battery Switch Stations in the City, remove all equipment and materials from the site(s), and restore the site(s) to the condition they were in prior to installation of the Battery Switch Stations..

**21.3.3.** In addition to its remedy under Section 21.3.1, Better Place may seek another eligible Bay Area public agency to replace SFMTA as the subrecipient of the FHWA Grant from Caltrans, the project sponsor and lead public partner for the Program subject to the approval of FHWA, Caltrans, the Metropolitan Transportation Commission, and other granting agencies as required.

**21.3.4.** In the event the parties elect remedies under Sections 21.3.1 or 21.3.2, title to the Battery Switch Stations shall vest in Better Place and the City shall be responsible for payment of the remaining federal interest of the Battery Switch Stations, if any, to FHWA.

**21.4. Submission of Invoice.** Within 60 days after the specified termination date, Better Place shall submit to City an invoice, which shall set forth each of the following as a separate line item:

**21.4.1.** The reasonable cost to Better Place, without profit, for all services and other work City directed Better Place to perform prior to the specified termination date, for which there is no dispute as to the validity of the charges, and for which services or work City has not already tendered payment. Reasonable costs are those costs allowed under the Federal Acquisition Regulations (FAR) and may include actual indirect cost calculated in accordance with the FAR. Indirect cost rates are subject to approval by Caltrans prior reimbursement. Any overhead allowance shall be separately itemized. Better Place may also recover the reasonable cost of preparing the invoice. Reimbursement shall not be made for in-kind services identified as local match to federal funds in the grant authorization documents.

**21.4.2.** The reasonable cost of settling all liabilities and claims directly arising out of the termination of the Contract for convenience (and not preexisting in any respect), including, but not limited to leases, subcontracts, orders, demobilization costs, and employees.

**21.4.3.** The reasonable cost to Better Place of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

**21.4.4.** A deduction for the cost of materials to be retained by Better Place, taking into consideration any depreciation of such materials, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

**21.4.5.** Notwithstanding the above, in a termination for convenience where the Parties elect the remedy under Section 21.2.2, provided there is no default on the part of Better Place, the SFMTA will pay half the cost of removal of the equipment and materials from the site and restoration of the site, less any lease payments the SFMTA may have made to the Department of Public Works or other City agency on Better Place's behalf for the site.

**21.5.** In no event shall City be liable for costs incurred by Better Place or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding Section 21.3. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such section.

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

**21.7.** Under no circumstances shall City's payment obligation under this Section 21 exceed the amount specified in Section 8.1, less amounts previously paid to Better Place.

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

## **22. Consequences upon Expiration; Survival of Contract Provisions.**

**22.1. Expiration of Term.** Upon expiration of the term of this Agreement, and provided that Better Place is not in default of any of its obligations under this Agreement, Better Place may, at its exclusive discretion, continue to operate and maintain the Battery Switch Stations in the City as provided in subsections 6.1.6 and 6.1.7, subject to the terms of applicable

ground lease(s) in the City. In the event that Better Place elects not to continue to operate and maintain the Battery Switch Station(s) after expiration of the Agreement, and if requested by FHWA, Better Place shall be responsible for repaying to the City or FHWA, as appropriate, the remaining value, if any, of the federal interest in the Battery Switch Station(s) that have been removed from the site(s), whether in the City or in San José.

**22.2. Survival.** This Section 22 and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8. Payments
10. Submitting False Claims
11. Disallowance
12. Taxes
13. Independent Contractor; Payment of Taxes and Other Expenses
14. Insurance
15. Indemnification
17. Liability of City
20. Remedies
24. Proprietary or Confidential Information of Parties
26. Ownership of Battery Switch Stations, EVs; Lease of Battery Switch Stations
27. Works for Hire
28. Audit and Inspection of Records
47. Modification of Agreement.
48. Administrative Remedy for Agreement Interpretation
49. Agreement Made in California; Venue
50. Construction
51. Entire Agreement
55. Severability
56. Protection of Private Information

**23. Conflict of Interest.**

a. Through its execution of this Agreement, Better Place acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

b. Better Place shall avoid all conflicts of interest or appearance of conflict of interest in performance of this Agreement. Better Place is familiar with San José's prohibition against the acceptance of any gift by a San José officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code. Better Place agrees not to offer any San José officer or designated employee any gift prohibited by said Chapter. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Agreement by Better Place. In addition to any other remedies San José may have in law or equity, San José may terminate this Agreement for such breach as provided in Section 18 of this Agreement.

c. Better Place is familiar with the provisions relating to the disqualification of former officers and employees of San José in matters which are connected with former duties or

official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code (“Revolving Door Ordinance”). Better Place shall not utilize either directly or indirectly any officer, employee, or agent of San José to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

**24. Proprietary or Confidential Information of Parties.**

The Parties understand and agree that, in the performance of the work or services under this Agreement or in contemplation thereof, a Party may have access to private or confidential information which may be owned or controlled by the other Party and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to a Party. The Parties agree that all proprietary information disclosed by City to Better Place, San José to Better Place, and by Better Place to the City and Better Place to San José shall be held in confidence and used only in performance of the Agreement, unless required to be disclosed under law. The Parties shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

**25. Notices to the Parties.**

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

To City: San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7th Floor  
San Francisco, California 94103-1267  
Attn.: Deputy Director of Taxi Services  
email: [christiane.hayashi@sfmta.com](mailto:christiane.hayashi@sfmta.com)  
Fax: 415-701-5437

with a copy to: San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 8<sup>th</sup> floor  
San Francisco, California 94103-1267  
Attn.: Manager, Grants & Procurement  
email: [joel.goldberg@sfmta.com](mailto:joel.goldberg@sfmta.com)  
Fax: 415-701-4734

To San José: City of San José  
Department of Transportation  
200 East Santa Clara Street  
San José, California 95113  
Attn.: Manuel Pineda  
email: [manuel.pineda@sanjoseca.gov](mailto:manuel.pineda@sanjoseca.gov)  
Fax: 408-292-6092

With a copy to: San José City Attorney’s Office  
200 East Santa Clara Street  
San José, California 95113  
Attn.: Rick Doyle, City Attorney  
Email: [rick.doyle@sanjoseca.gov](mailto:rick.doyle@sanjoseca.gov)

Fax: 408-998-3131

To Better Place: Better Place Mobility Services, Inc.  
1070 Arastradero Road Suite 200  
Palo Alto, California 94304  
Attn.: Pete Cooper  
email: pete.cooper@betterplace.com  
Fax: 650-845-2850

with a copy to: Better Place Inc.  
1070 Arastradero Road Suite 200  
Palo Alto, California 94304  
Fax: 650-845-2850

Any notice of default must be sent by registered mail.

## **26. Ownership of Battery Switch Stations, EVs; Lease of Battery Switch Stations.**

**26.1. Ownership.** City shall have title to the Battery Switch Stations constructed as part of the Program.; Better Place shall have title to all EVs purchased by Better Place for the Program. At the end of the term of the Lease, as defined in Section 26.2.1, title to the Battery Switch Stations shall automatically vest in Better Place upon the payment from Better Place to the SFMTA of the remaining value, if any, of the federal interest in the Battery Switch Station(s). If the Lease is terminated prior to the end of its term under the provisions of Section 20.1.1, title to the Battery Switch Stations shall vest in Better Place, subject to the conditions set forth in Section 20.1.1.

**26.2. Lease of Battery Switch Stations.** City agrees to lease the Battery Switch Stations to Better Place, subject to the following terms and conditions (the "Lease").

**26.2.1. Term of Lease.** The term of the Lease as to each Battery Switch Station shall commence upon complete installation of the Battery Switch Station (including approvals by all required public agencies) and end at the earlier of the end of the Useful Life of the Battery Switch Stations or nine years after the commencement of the Lease. In no event, shall the Lease extend beyond the term of this Agreement. Termination of the Lease is subject to earlier termination pursuant to other provisions of this Agreement and the separate ground leases for each Battery Switch Station. If Better Place defaults under the provisions of a ground lease(s) for any Battery Switch Station(s) located in San José, San José shall have its rights to terminate under Sections 18.1 and 20.1. If Better Place fails to remove and restore the site(s) within 30 days of the date of termination of the ground lease(s), San José will first attempt to enforce or execute upon the collateral provided by Better Place to San José under the applicable ground lease(s) and/or provide City with the opportunity to enforce or execute against the collateral under Section 6.3.10 before requesting that City, if it has title to the Battery Switch Stations at that time, remove all equipment and materials and restore the site(s). If neither San José nor City is able to enforce or execute against the collateral under Section 6.3.10, City, provided that it has title to the Battery Switch Stations at the time, will be responsible for all obligations regarding removal of equipment and materials at the site(s) in San José.

**26.2.2. Obligations of Better Place.** With respect to the Lease, Better Place's obligations shall be as set forth in other provisions of the Agreement relating to operation and maintenance of the Battery Switch Stations, including, but not limited to, Section 6.1 and Sections 12-15. In addition, Better Place shall report to City within 30 days any occurrence that will prevent compliance with this section (*e.g.*, accident rendering the Battery Switch Station(s) inoperative, mechanical deterioration to the extent that repair is infeasible).

## 27. Works for Hire.

**27.1. General.** If, in connection with services performed and paid for under this Agreement, Better Place or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City, or San José, as applicable. If it is ever determined that any works created by Better Place or its subcontractors under this Agreement are not works for hire under U.S. law, Better Place hereby assigns all copyrights to such works to the City and San José, as applicable, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City or San José, as applicable, Better Place may retain and use copies of such works for reference and as documentation of its experience and capabilities.

**27.2. Promotions or Advertising.** Better Place shall obtain City or San José's approval, as applicable, for any text used in conjunction with this Program on Better Place's website or in any promotional or advertising media produced by Better Place. SFMTA shall provide text, as requested by Better Place, and shall update the text regarding SFMTA's services when required.

**27.3. Link to SFMTA Web Site.** On Better Place's Website, there shall be a direct link to the SFMTA home page (<http://www.sfmta.com>). The text to accompany this link shall state as follows (unless otherwise updated by SFMTA): "For information about taxi service in San Francisco, visit the San Francisco Municipal Transportation Agency website or call 415-701-4400." The link shall have the following qualities:

**27.3.1.** The link may be a text link or a graphics link using only a MUNI logo supplied by MUNI and displayed in accordance with this Agreement.

**27.3.2.** The text or logo link to the SFMTA Web site must not require auxiliary client-side technology (e.g. cookies, JavaScript, Flash, Java, etc.) in order to work.

**27.3.3.** The text or logo link to the SFMTA Web site shall be "stand alone; in other words, it shall not be imbedded in an item (*i.e.*, product) description.

**27.3.4.** The text or logo link to the SFMTA Web site shall not put the SFMTA site in frames.

**27.3.5.** There must not be a link to a URL containing "/home" or any page within that directory.

**27.3.6.** If a logo link is used, the IMG tag for that logo must include an ALT attribute containing "SFMTA" or "SF Muni" or "Visit SFMTA" or "Visit SF Muni" or "Link to SFMTA" or "Link to Muni".

**27.4. Link to Better Place's Web Site.** SFMTA will provide a link on its web page to Better Place's website. Better Place shall provide SFMTA with the specific URL for the appropriate page on its website.

## 28. Audit and Inspection of Records.

Better Place agrees to maintain and make available to the City and San José, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Better Place will permit City and San José 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. Better Place shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is

later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City and San José by this Section.

**29. Assignment.**

The services to be performed by Better Place are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Better Place unless first approved by City or San José, as applicable, by written instrument executed and approved in the same manner as this Agreement. Any assignment must contain provisions that the assignee assume all obligations and liabilities under this Agreement.

**30. 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.

**31. Earned Income Credit (EIC) Forms.**

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Better Place shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Better Place has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Better Place; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Better Place of the terms of this Agreement. If, within 30 days after Better Place receives written notice of such a breach, Better Place fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Better Place fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City or San José may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Better Place shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

**32. Disadvantaged Business Enterprise Program/Subcontractors.**

**32.1. Policy.** It is the policy of SFMTA to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which DBEs and Underutilized DBEs (UDBEs) can compete fairly for contracts and subcontracts relating to SFMTA's construction, procurement and professional services activities. In connection with this Agreement, Better Place will cooperate with the SFMTA in meeting these commitments and objectives, as explained more fully in Caltrans' UDBE Program, which is incorporated into this Agreement and which will be implemented in accordance with FHWA requirements. Better Place shall, under the guidance of SFMTA, carry out the applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by Better Place to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the SFMTA deems appropriate. SFMTA's Contract Compliance Office shall serve as program management resource for all information, questions, and resources concerning Better Place's implementation of the UDBE requirements.

**32.2. UDBE Goal.** The SFMTA will evaluate subcontracting opportunities and assign an appropriate UDBE participation goal, if applicable, in accordance with Caltrans' UDBE Program prior to Better Place requesting a bid, quotation, or proposal for all construction, procurement and/or professional services activities required to implement the Project. Better Place will submit to the SFMTA CCO the scope of the construction, products, or services it intends to procure in order for SFMTA to establish a UDBE goal for the particular procurement, if appropriate.

**32.3. Monitoring, Counting and Reporting UDBE Participation.** Better Place shall implement, monitor, count and report on its UDBE participation in accordance with Caltrans' UDBE Program.

**32.4. Substitutions.** No substitutions of UDBE subcontractors shall be made at any time without the written approval of the Manager of the SFMTA Contract Compliance Office. In the event that a UDBE subcontractor is unable to perform successfully and is to be replaced, the Better Place shall make good faith efforts to replace the original DBE subcontractor with another DBE subcontractor.

### **33. Nondiscrimination; Penalties.**

**33.1. Better Place Shall Not Discriminate.** In the performance of this Agreement, Better Place agrees not to discriminate against any employee, City and County employee, or San José employee, working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**33.2. Subcontracts.** Better Place shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from the SFMTA). In addition, Better Place shall incorporate the provisions of 49 CFR Section 26.13(b) into all of its subcontracts.. Better Place's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

### **34. MacBride Principles—Northern Ireland.**

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Better Place acknowledges and agrees that he or she has read and understood this section.

### **35. Tropical Hardwood and Virgin Redwood Ban.**

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

### **36. Drug-Free Workplace Policy.**

Better Place acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Better Place agrees that any violation of this

prohibition by Better Place, its employees, agents or assigns will be deemed a material breach of this Agreement.

**37. Resource Conservation.**

Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Better Place to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

**38. Compliance with Americans with Disabilities Act.**

Better Place acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Better Place shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Better Place agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Better Place, its employees, agents or assigns will constitute a material breach of this Agreement.

**39. Sunshine Ordinance.**

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors’ bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

**40. Left Blank by Agreement of the Parties**

**41. Limitations on Contributions.**

Through execution of this Agreement, Better Place acknowledges that it is familiar with section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Better Place acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Better Place further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Better Place’s board of directors; Better Place’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Better Place; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Better Place. Additionally, Better Place acknowledges that Better Place must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

**42. Requiring Minimum Compensation for Covered Employees.**

**42.1.** Better Place agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Better Place's obligations under the MCO is set forth in this Section. Better Place is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

**42.2.** The MCO requires Better Place to pay Better Place's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Better Place is obligated to keep informed of the then-current requirements. All SF Access and Group Van contractors shall pay SFMTA-funded paratransit drivers a minimum wage as required by the City's Minimum Compensation Ordinance for the first 90 days of service and/or completion of the driver training requirements, whichever comes first. Currently the hourly wage required by the Minimum Compensation Ordinance is \$11.54 (\$11.03 per hour for non-profit entities). After that period, paratransit provider subcontractors shall pay SFMTA-funded SF Access drivers not less than \$14.80 per hour and Group Van drivers not less than \$12.97 per hour. These minimum wages shall increase on a yearly basis based on cost of living adjustments received by the contractors. All cost of living adjustments received by subcontractors shall be passed on to all SFMTA-funded paratransit drivers with at least a proportional wage adjustment.

**42.3.** Better Place shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

**42.4.** Better Place shall maintain employee and payroll records as required by the MCO. If Better Place fails to do so, it shall be presumed that the Better Place paid no more than the minimum wage required under State law.

**42.5.** The City is authorized to inspect Better Place's job sites and conduct interviews with employees and conduct audits of Better Place

**42.6.** Better Place's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Better Place fails to comply with these requirements. Better Place agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Better Place's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

**42.7.** Better Place understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Better Place fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Better Place fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

**42.8.** Better Place represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

**42.9.** If Better Place is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with the SFMTA for the fiscal year is less than \$25,000, but Better Place later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Better Place shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Better Place and the SFMTA to exceed \$25,000 in the fiscal year.

**43. Left Blank by Agreement of Parties.**

**44. First Source Hiring Program.**

**44.1. Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Better Place shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

**44.2. First Source Hiring Agreement.** As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Better Place shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Better Places shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

**44.2.1.** Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

**44.2.2.** Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

**44.2.3.** Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and

procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

**44.2.4.** Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

**44.2.5.** Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

**44.2.6.** Set the term of the requirements.

**44.2.7.** Set appropriate enforcement and sanctioning standards consistent with this Chapter.

**44.2.8.** Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

**44.2.9.** Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

**44.3. Hiring Decisions.** Better Place shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

**44.4. Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

**44.5. Liquidated Damages.** Better Place agrees:

**44.5.1.** To be liable to the City for liquidated damages as provided in this section;

**44.5.2.** To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

**44.5.3.** That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

**44.5.4.** That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

**44.5.5.** That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

(a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

**44.5.6.** That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

**44.6. Subcontracts.** Any subcontract entered into by Better Place shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**45. Prohibition on Political Activity with City Funds.**

In accordance with San Francisco Administrative Code Chapter 12.G, Better Place may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Better Place agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Better Place violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Better Place from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Better Place's use of profit as a violation of this section.

**46. Preservative-treated Wood Containing Arsenic.**

Better Place may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from SF Environment under Section 1304 of the Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Better Place may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the SF Environment. This provision does not preclude Better Place from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**47. Modification of Agreement.**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Better Place shall cooperate with the SFMTA to submit to the SFMTA Contract Compliance Office 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%.

**48. Administrative Remedy for Agreement Interpretation.**

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

**49. 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.

**50. Construction.**

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

**51. Entire Agreement.**

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. Except as otherwise provided in this Agreement with respect to the rights of the federal government, the State of California and other granting agencies, this Agreement is for the benefit of Better Place, City, and San José only and is not for the benefit of, and was not created for the benefit of, any third parties. Nothing in this Agreement creates, or will be construed as creating, any rights enforceable by any person or entity not a party to this Agreement. This contract may be modified only as provided in Section 48, “Modification of Agreement.”

**52. Compliance with Laws.**

Better Place shall keep itself fully informed of the City and San José’s Charter, codes, ordinances and regulations, 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.

**53. Services Provided by Attorneys.**

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney or San José City Attorney, as applicable. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors

of Better Place, will be paid unless the provider received advance written approval from the City Attorney or San José City Attorney, as applicable.

**54. Left blank by agreement of the parties.**

**55. 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.

**56. Protection of Private Information.**

Better Place has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Better Place agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Better Place pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Better Place.

**57. Graffiti Removal.**

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City and San José's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County, San José, and their residents, and to prevent the further spread of graffiti. Better Place shall remove all graffiti from any real property owned or leased by Better Place in the City and County of San Francisco and City of San José within forty eight (48) hours of the earlier of Better Place's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Better Place to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" located in San Francisco shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Better Place shall be familiar with and comply with San José's Graffiti Ordinance set forth in Chapters 9.57 and 9.58 of the San José Municipal Code.

Any failure of Better Place to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

**58. Food Service Waste Reduction Requirements.**

Better Place agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Better Place agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Better Place agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Better Place's failure to comply with this provision.

**59. Cooperative Drafting.**

This Agreement has been drafted through a cooperative effort of both parties, 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.

**60. Contingent Fees.**

Better Place warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Better Place for the purpose of securing business. For breach or violation of this warranty, the City has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

**61. Dispute Resolution.**

For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within 15 days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with 14 days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position.

Disputes arising in the performance of this Agreement which are not resolved by negotiation between the parties shall be decided in writing by the Project Manager. The decision shall be administratively final and conclusive unless within ten days from the date of such decision, Better Place mails or otherwise furnishes a written appeal to the City's Director of Finance and Information Technology, or San José' Director of Transportation, or their designee. In connection with such an appeal, the Better Place shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City's Director of Finance and Information Technology, or San José's Director of Transportation, shall be administratively final and conclusive. This section applies to all disputes unless a specific provision of this Agreement provides that the Project Manager's decision as to a particular dispute is final.

Pending final resolution of a dispute hereunder, Better Place shall proceed diligently with the performance of its obligations under the Agreement in accordance with the written directions of the Project Manager.

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

**62. Safety.**

**62.1.** Better Place shall comply with OSHA regulations applicable to Better Place regarding necessary safety equipment or procedures. Better Place shall comply with safety instructions issued by the City's and San José's Safety Officer and other City and San José representatives. Better Place personnel shall wear hard hats and safety vests at all times while working on any construction project site.

**62.2.** Pursuant to the authority contained in Section 591 of the Vehicle Code, the City or San José has determined that such areas are within the limits of the project and are open to public traffic. The Contractor shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Better Place shall take all reasonably necessary precautions for safe operation of its vehicles, if any, and the protection of the traveling public from injury and damage from such vehicles.

**62.3.** Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

**63. Debarment and Suspension Certification.**

**63.1.** Better Place's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Better Place has complied with Title 2, Code of Federal Regulations, Parts 180 and 1200, Debarment and Suspension, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the City and San José.

**63.2.** Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining contractor responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

**64. Prohibition of Expending Local Agency State or Federal Funds for Lobbying.**

**64.1.** Better Place certifies to the best of its knowledge and belief that:

**64.1.1.** No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of Better Place to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

**64.1.2.** If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any

federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; Better Place shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**64.2.** This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**64.3.** Better Place also agrees by signing this document that it shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

**65. City Provisions.**

The following provisions of this Agreement apply only to activities in San Francisco and not to activities in San José: 31, 33.2, 33.3, 34, 35, 37, 39, 41, 42, 44, 45, 46, 56, 58.

**66. Counterparts.**

This Agreement may be executed in one or more counterparts and delivered via facsimile or other means of electronic image transmission which, together, shall constitute one and the same instrument and be deemed an original for all purposes. Although each Party covenants to provide to the other a signed "wet signature" original counterpart of this Agreement, any failure to deliver such "wet signature" original shall not affect the enforceability of fully executed counterparts of this Agreement delivered via facsimile or other means of electronic image transmission.

IN WITNESS WHEREOF, Contractor and City have executed this Agreement as of the date first referenced above.

<p><b>CITY</b></p> <p><b>San Francisco Municipal Transportation Agency</b></p> <hr/> <p>Edward D. Reiskin Director of Transportation</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By:</p> <hr/> <p>Robin M. Reitzes Deputy City Attorney</p> <p>Authorized by:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No.</p> <hr/> <p>Adopted: _____</p> <p>Attest: _____</p> <p>Roberta Boomer, Secretary SFMTA Board of Directors</p>	<p><b>BETTER PLACE MOBILITY SERVICES</b></p> <hr/> <p>Jason Wolf President</p> <p>City vendor number: 84316</p> <hr/> <p><b>SAN JOSE</b></p> <p>By _____</p> <p>Norberto Duenas Deputy City Manager</p> <p>Approved as to Form:</p> <p>Richard Doyle, City Attorney</p> <p>By:</p> <hr/> <p>Johnny V. Phan Deputy City Attorney</p>
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## EXHIBIT A

### Project Funding Summary

<b>Funding Source</b>	<b>Totals</b>
• MTC Grant	\$6,000,000
• Local Partners, Cash and In-Kind*	\$4,302,000
• Better Place and Corporate Partners, Cash and In-Kind*	\$16,696,347
<b>Total Program Value</b>	<b>\$26,998,347</b>
• Cost Share Obligation, %	11.47%
• Cost Share Projected, %	280%
<b>Local Partner Cash/In-Kind* and Grants Funding</b>	<b>\$4,302,000</b>
• BAAQMD Grant	\$450,000
• SF Environment Grant	\$100,000
• SFMTA Program and Grant Administration	\$300,000
• San Jose Program Administration	\$100,000
• Cab Companies	\$3,075,000
• City Car Share In-Kind*	\$202,000
• PIA In-Kind*	\$25,000
• CAISO In-Kind* (grid services study)	\$50,000

\*In-Kind shall meet the requirements stated here-in to be eligible for reimbursement under the grant

## EXHIBIT B

### Other Program Participants

1. **SF Environment.** This City department will provide \$100,000 in funding from a grant from the U.S. Department of Energy for the City's EV Initiative Program.
2. **Taxi Companies.** The Taxi Companies will enter into contractual arrangements with Better Place to use EVs owned by Better Place in the Program. The Taxi Companies will help select drivers to participate in the Program, provide general maintenance for the EV taxis, provide taxi shift, dispatch and radio operations, provide liability and workers compensation insurance for the EV taxis, participate in Program studies, and provide other in-kind services.
3. **City CarShare.** The parties contemplate that City CarShare will integrate at least two EVs into its fleet, initially for use by a select group of trained employees and members, before expanding the use of the EVs to its membership.
4. **California ISO (CAISO).** The parties contemplate that CAISO will provide technical advice and analyze, test and evaluate the impact of the Battery Switch Stations on the power grid.
5. **Plug In America (PIA).** The parties contemplate that PIA will provide assistance in developing training and educational materials about the Program for its members, the taxi drivers, and the general public.
6. **BAAQMD.** BAAQMD will be supporting the Program through a grant of \$450,000 to Better Place.

**Memorandum of Understanding for 708 Davis Street (Lot 008, Block 0140 in San  
Francisco)  
Between  
Department of Public Works  
And  
The San Francisco Municipal Transportation Agency**

This Memorandum of Understanding (“MOU”) is entered into on \_\_\_\_\_ 1, 2012 (the “Effective Day”) by and between the Department of Public Works (“DPW”) of the and the San Francisco Municipal Transportation Agency (“SFMTA”), both agencies of the City and County of San Francisco (“City”).

**RECITALS**

A. The City, a municipal corporation, is the owner of the property known as 708 Davis Street, Lot 008, Block 0140, City and County of San Francisco (the “Property”). The Property is currently leased to a third party for parking purposes.. The Property is under the jurisdiction of DPW. The City, on behalf of DPW, desires to lease the property to a different third party (Better Place Mobility Services, Inc., a Delaware Corporation (“Third Party Tenant”)) in the future for a different purpose, an Electric Vehicle Battery Switch Station, and in doing so, would affect the rental revenue stream from the Property currently enjoyed by DPW.

B. Upon commencement of a new lease of the Property to the Third Party Tenant, the parties hereto enter into this MOU to evidence their understanding of certain responsibilities with respect to the Property, in particular to the maintenance of the revenue stream to DPW from the Property for the first five years of the lease with the Third Party Tenant.

THEREFORE, DPW and SFMTA hereby agree as follows:

**Section 1. The Property**

1. **The Property.** DPW currently leases the Property to \_\_\_\_\_, and said lease continues month-to-month until otherwise terminated by either party. Said lease shall be terminated upon receipt of notice of lease commencement by Third Party Tenant pursuant to Section \_\_\_\_ of the Land Lease between City and Third Party Tenant, attached hereto as Exhibit I, and referenced herein as “Third Party Land Lease”.

2. **Revenue to DPW.** Upon commencement of the Third Party Land Lease, SFMTA shall make payment to DPW, pursuant to separate work order agreement, in a sum equal to \$6,800 per month (Revenue Amount), paid semi-annually, for the first five years of the Third Party Land Lease. Payments shall be made in arrears, within 30 days after submission of an invoice from DPW to SFMTA.

**Section 2. Work Orders Between DPW and the SFMTA**

**SFMTA agrees to fund the monthly Revenue Amount through work orders for DPW for each affected fiscal year. Real Estate Division of the City will provide reports to the SFMTA and DPW on a semi-annual basis as to the status of the Third Party Land Lease.**

**Section 3 Other Provisions**

1. **Annual Updates Not Required.** The parties agree that this MOU shall be self-renewing on an annual basis, and therefore no annual updates shall be necessary unless a material change is desired by either party, which shall require mutual acceptance through an amendment to this MOU.

2. **Term.** The term of this MOU shall commence on the Effective Date and shall terminate after SFMTA has made its final payment to DPW under this MOU.

3. **Amendment.** The terms of this MOU may be amended by written agreement executed between both parties.

4. **Designated Contact Person.** DPW’s designated contact person for this MOU shall be \_\_\_\_\_. The SFMTA’s designated contact person for this MOU shall be Kerstin Magary, Senior Manager, Real Estate Section.

5. **Dispute Resolution.** The SFMTA shall have the right to contest the amount, validity or applicability of any semi-annual invoice, or request further information, in the case of an incomplete invoice, or any other matter related to this MOU, by notifying DPW in writing within 15 days of receipt of that invoice (“Notice of Contest”). Any such Notice of Contest shall describe in detail the amount(s) being contested or the other matter(s) in dispute and the reasons for such contest. Upon receipt of the Notice of Contest from the SFMTA, the appropriate project managers from DPW and the SFMTA, or other designated staff, shall in good faith meet with each other to resolve the contested issues. If the designated contact person from the SFMTA and DPW are unable to resolve the dispute, the matter shall be forwarded to the Chief Financial Officer of the SFMTA and Deputy Director of DPW, whose decision shall be final and binding on both parties.

6. **Entire Agreement.** This agreement sets forth the entire agreement between the SFMTA and DPW and supersedes all other prior written or oral provisions.

7. **Governing Law.** All transactions described herein are subject to and must be conducted in accordance with the applicable requirements of the City's Charter and codes and applicable state and/or federal laws.

8. **Severability.** The invalidity or unenforceability of a particular provision of this MOU shall not affect the other provisions hereof.

9. **Notices.** Notices and other communications to the SFMTA shall be addressed as follows: San Francisco Municipal Transportation Agency

Real Estate Section  
One South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, California 94103  
Attn: Senior Manager

Copy to:  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, California 94103  
Attn: Deputy Director of Taxis

Notices and other communications to DPW shall be addressed as follows:

San Francisco, California 94102  
**Attn:** \_\_\_\_\_

IN WITNESS WHEREOF the Parties have caused this MOU to be executed by their duly appointed representatives this \_\_\_\_ day of \_\_\_\_\_, 2012.

DEPARTMENT OF PUBLIC WORKS

MUNICIPAL TRANSPORTATION AGENCY

\_\_\_\_\_  
By: Mohammed Nuru  
Director

\_\_\_\_\_  
By: Edward D. Reiskin  
Director of Transportation

