

THIS PRINT COVERS CALENDAR ITEM NO.: 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Approving Contract No. 2024-11 with Conduent Transport Solutions, Inc. (Conduent) for Computer Assisted Dispatch/Automatic Vehicle Location (CAD/AVL) System Maintenance and Support Services, including remote preventative maintenance, monitoring, and troubleshooting for the CAD/AVL System software and equipment, for a contract amount not to exceed \$4,348,272 and a term of five years.

SUMMARY:

- As part of the Radio System Replacement Project Design Build Services, Contract 1240, Conduent designed and implemented a Computer Assisted Dispatch/Automatic Vehicle Location (CAD/AVL) system. The CAD/AVL System was put into service in November 2016.
- The CAD/AVL system is used by SFMTA Transit Division (Muni) managers for real-time management of transit rail and bus service, transit performance monitoring, for communication with vehicle operators, and the CAD/AVL system generates data necessary for accurate customer vehicle predictions; and
- The services Conduent will provide under the proposed contract include remote preventative maintenance, monitoring, and troubleshooting for the CAD/AVL System software and equipment.
- The SFMTA requires maintenance and support services to ensure the continued optimum operation of the CAD/AVL System, which is a vital component of the SFMTA's transit system; and
- Due to the proprietary nature of the Conduent CAD/AVL system, support services are only available from Conduent, and must be procured as a sole source contract.
- There is no Small Business Entity (SBE) subcontracting participation requirement for this Contract, due to the proprietary nature of the services.

ENCLOSURES:

1. SFMTAB Resolution
2. SFMTA Contract No. 2024-11

APPROVALS:

DATE

DIRECTOR		July 31, 2024
SECRETARY		July 31, 2024

ASSIGNED SFMTAB CALENDAR DATE: August 6, 2024

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PURPOSE

To approve Contract No. 2024-11 with Conduent Transport Solutions, Inc. for CAD/AVL System Maintenance and Support Services, including remote preventative maintenance, monitoring, and troubleshooting for the CAD/AVL System software and equipment, for a contract amount not to exceed \$4,348,272 and a term of five years.

STRATEGIC PLAN GOALS AND TRANSIT-FIRST POLICY PRINCIPLES

This item supports the following Strategic Plan Goals:

Goal 4: Make streets safer for everyone.

Goal 5: Deliver reliable and equitable transportation services

Goal 9: Fix things before they break, and modernize systems and infrastructure

Transit-First Policy:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Transit priority improvements, such as designated transit lanes and streets and improved signalization, shall be made to expedite the movement of public transit vehicles (including taxis and vanpools) and to improve pedestrian safety.

DESCRIPTION

On March 29, 2012, SFMTA Board of Directors approved Contract No. 1240, Radio System Replacement Project Design Build Services with L3Harris, Inc., to implement the Radio System Replacement project. The Radio System Replacement project was a design-build project to design, test and implement a new radio system for all SFMTA transit vehicles. That project was completed on or about March 16, 2019. Conduent was a subcontractor to L3Harris under Contract 1240. Conduent provided the CAD/AVL System as part of the Radio System Replacement Project, which transmits voice communications and data over the L3Harris radio system.

The CAD/AVL system is used by SFMTA Transit Division (Muni) managers for real-time management of transit rail and bus service, transit performance monitoring, for communication with vehicle operators, and the CAD/AVL system generates data necessary for accurate customer vehicle predictions.

The CAD/AVL system is comprised of proprietary hardware and software that is installed on revenue vehicles and on fixed-end servers.

The proposed contract will deliver remote preventative maintenance, monitoring, and troubleshooting, to ensure that the CAD/AVL System performs at the same or better level than when it was accepted. Due to the proprietary nature of Conduent's CAD/AVL System, maintenance and support services for the CAD/AVL System are only available from Conduent,

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and must be procured as a sole source contract in accordance with San Francisco Administrative Code Sections 21.5(b) (sole source), 21.5(d) (proprietary articles) and 21.30 (software and associated professional services exemptions).

On March 19, 2019, the SFMTA Board of Directors approved Contract 2018-49 with Conduent (MTAB Resolution No. 190319-034) to provide as-needed services and equipment necessary to upgrade or the CAD/AVL System using capital improvement funds, which may include FTA grant funds. As amended, Contract 2018-49 is for an amount not to exceed \$8,750,000 and a term of 75 months. Contract 2018-49 was also a sole source contract, due to the proprietary nature of the software and services to be procured. The SFMTA cannot obtain system maintenance services from Conduent under Contract 2018-49, as that contract is only to procure capital improvements.

There is no Small Business Entity (SBE) subcontracting participation requirement for this contract.

PUBLIC OUTREACH AND STAKEHOLDER ENGAGEMENT

To develop requirements and scope for this contract, project staff consulted key stakeholders from Transit and Central Subway Project and incorporated divisional business requirements into the scope of work for this contract.

Public outreach was not done as this contract is software and hardware maintenance that are proprietary products and services of Conduent. These services will not have an impact on the environment or the any adverse impacts to the public.

ALTERNATIVES CONSIDERED

The alternatives to issuing Contract No. 2024-11 would be for the SFMTA to:

1. Issue an open bid for a new CAD/AVL System. This option means discarding the existing infrastructure on vehicles, which would cause significant disruption to transit operations, create technology system integration risks, and organizational change management risks.
2. The City could choose not to contract for CAD/AVL System maintenance services. But the City does not have access to proprietary intellectual property necessary to maintain the CAD/AVL System itself, and eventually the system would become unreliable or cease to function.

The alternatives to issuing Contract No. 2024-11-LOC do not meet the SFMTA's need to maintain a state of good repair and to address new operational requirements. Due to Conduent's proprietary products and services, any to update the CAD/AVL system will require services from Conduent.

FUNDING IMPACT

The term of the contract is five years for the total amount of \$4,348,272. The contract budget is

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allocated from the SFMTA's Operating Budget.

This contract is procured through the single source requirements for sole source contracting.

ENVIRONMENTAL REVIEW

On May 21, 2024, the SFMTA, under authority delegated by the Planning Department, determined that Contract No. SFMTA 2024-11 is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

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

OTHER APPROVALS RECEIVED OR STILL REQUIRED

On June 5, 2023, the Civil Service Commission approved Contract number # 47450 22/23 for As-Needed Professional Services with Conduent.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve Contract No. 2024-11 with Conduent Transport Solutions, Inc. for CAD/AVL System Maintenance and Support Services, including remote preventative maintenance, monitoring, and troubleshooting for the CAD/AVL System software and equipment, for a contract amount not to exceed \$4,348,272 and a term of five years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, on March 29, 2012, San Francisco Municipal Transportation Agency Board of Directors approved Contract No. 1240, Radio System Replacement Project Design Build Services, with L3Harris, Inc. (L3Harris) to design, construct, implement and test a new radio system; and,

WHEREAS, As part of the Radio System Replacement Project, Conduent Inc. (Conduent) worked as a subcontractor to Harris to design and implement a Computer Aided Dispatch and Automatic Vehicle Location (CAD/AVL) System, which was put into service in November 2016; and,

WHEREAS, The CAD/AVL System is comprised of proprietary hardware and software that is installed on revenue vehicles and on fixed-end servers; and,

WHEREAS, The CAD/AVL system is used by SFMTA Transit Division (Muni) managers for real-time management of transit rail and bus service, transit performance monitoring, for communication with vehicle operators, and the CAD/AVL system generates data necessary for accurate customer vehicle predictions; and,

WHEREAS, The SFMTA requires maintenance and support services to ensure the continued optimum operation of the CAD/AVL System, which is a vital component of the SFMTA's transit system; and,

WHEREAS, The services Conduent will provide under the proposed contract include remote preventative maintenance, monitoring, and troubleshooting for the CAD/AVL System software and equipment, which are only available from Conduent, and must be procured as a sole source contract in accordance with San Francisco Administrative Code Sections 21.5(b) (sole source), 21.5(d) (proprietary articles) and 21.30 (software and associated professional services exemptions); and,

WHEREAS, There is no Small Business Entity (SBE) subcontracting participation requirement for this Contract; and,

WHEREAS, On May 21, 2024, the SFMTA, under authority delegated by the Planning Department, determined that Contract No. SFMTA 2024-11 for the CAD/AVL Maintenance Agreement is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

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

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves Contract No. 2024-11 with Conduent Transport Solutions, Inc. (Conduent) for CAD/AVL System Maintenance and Support Services, including remote preventative maintenance, monitoring, and troubleshooting for the CAD/AVL System software and equipment, for a contract amount not to exceed \$4,348,272 and a term of five years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of August 6, 2024.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

**Agreement between the City and County of San Francisco
and
Conduent Transport Solutions, Inc.
for
CAD/AVL System Maintenance and Support Services**

CONTRACT NO: SFMTA-2024-11

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

**Agreement between the City and County of San Francisco
and
Conduent Transport Solutions, Inc.
for
CAD/AVL System Maintenance and Support Services**

CONTRACT NO: SFMTA-2024-11

This Agreement for CAD/AVL System Maintenance and Support Services (Agreement) is made as of _____, in San Francisco California, by and between Conduent Transport Solutions, Inc., 7160 Riverwood Drive, Columbia, Maryland 21046 (Conduent or Contractor), and the City and County of San Francisco (City), a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA wishes to contract with Contractor to obtain CAD/AVL System maintenance and support services.

B. SFMTA requires spare parts, Software updates, and related professional services to maintain the CAD/AVL System and to support the CAD/AVL System's continued operations as described more fully in this Agreement. SFMTA and Conduent have negotiated two agreements: (1) this Maintenance Services Agreement (SFMTA Contract No. SFMTA- 2024-1) for regular Maintenance Services and some Additional Services (as described in Appendix A to this Agreement) for the maintenance and repair of the CAD/AVL System; and (2) the As-Needed CAD/AVL Professional Work (SFMTA Contract No. 2018-49), which is a task order agreement under which the SFMTA will procure and Conduent will provide Upgrades and improvements to the CAD/AVL System and other capital improvements and expansions and functional changes to the CAD/AVL System.

C. Due to the proprietary nature of the Services required to maintain the CAD/AVL System, this Agreement was procured in accordance with sole source requirements set out in San Francisco Administrative Code Sections 21.5(b) (sole source), 21.5(d) (proprietary articles) and 21.30 (software and associated professional services exemptions), as was the Task Order Services Agreement, SFMTA Contract 2018-49.

D. There is no Local Business Entity (LBE) subcontracting participation requirement for this Agreement.

E. Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.

F. Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 47450-22/23 on June 5, 2024.

G. The SFMTA Board of Director's approved this Agreement by Resolution [insert resolution number] on [insert date of Commission or Board action].

Now, THEREFORE, the parties agree as follows:

Article 1 Purpose of this Agreement and Defined Terms

1.1 Purpose of this Agreement. The purpose and intent of this Agreement, as further described in Appendix A (Scope of Work) to this Agreement, is for the Contractor to provide to the SFMTA System maintenance and support services and proprietary Equipment (collectively "Services") necessary to ensure the continued operation of the Computer-Aided Dispatch and Automatic Vehicle Location (CAD/AVL) systems provided by Contractor and implemented by Harris Radio Corporation under SFMTA Contract 1240 for the SFMTA's Replacement Radio CAD/AVL System. Contractor's Services include professional consulting and support services concerning functions, maintenance, testing, system performance, reliability and safety testing of the CAD/AVL, CAD/AVL subsystems and components, OrbCAD software, ATCS interface, equipment embedded, server-based, and vehicle software, AVL track layer updates (collectively "CAD/AVL System" or "System"), as more specifically described in Appendix A.

1.2 Contractor was a subcontractor to Harris Radio Corporation under the SFMTA's Radio System Replacement Project Design Build Project (Contract 1240, Document No: 00520: Design Build Agreement), dated March 29, 2012 ("Radio System Contract"). Contractor's obligations under this Contract are limited to providing Services necessary to maintain and support the CAD/AVL System. Contractor is not responsible for elements of the Radio System for which Contractor was not responsible under the Radio System Contract.

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

1.3.1 "Additional Services" means those Services that Contractor will perform to maintain or repair the CAD/AVL System that are not Base Services and for which Contractor will separately bill the SFMTA (in addition to the quarterly Services Fee for Base Services).

1.3.2 "Agreement" or "Contract" means this contract document, including all Included Appendices, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference as provided herein.

1.3.3 "Base Services" means those general System maintenance Services described in Section 4 and Appendix A for which SFMTA pays Contractor a quarterly Services Fee.

1.3.4 "CAD/AVL" means the Computer Aided Dispatch (CAD) system and Automated Vehicle Location (AVL) system, referred to as the CAD/AVL System. elements of which Contractor provided to the SFMTA as part of the SFMTA's radio system.

1.3.5 “**CCO**” means the SFMTA Contract Compliance Office.

1.3.6 “**City**” or “**the City**” means the City and County of San Francisco, a municipal corporation.

1.3.7 “**City Data**” or “**Data**” means that data as described in Article 13 of this Agreement, which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement, as well as City’s Confidential Information.

1.3.8 “**CMD**” means the Contract Monitoring Division of the City.

1.3.9 “**Confidential Information**” means information that either Party designates as proprietary and confidential.

1.3.10 “**Contract Administrator**” means the contract administrator assigned to the Contract by the SFMTA, or his or her designated agent.

1.3.11 “**Contract Amount**” means the amount not to exceed amount of compensation stated in Section 3.3.1 of this Contract.

1.3.12 “**Contractor**” means Conduent Transport Solutions, Inc., 7160 Riverwood Drive, Columbia, Maryland 21046.

1.3.13 “**C&P**” means SFMTA Contracts and Procurement

1.3.14 “**Day**” (whether or not capitalized) means a calendar day, unless otherwise designated.

1.3.15 “**Deliverables**” means Contractor’s work product resulting from the Services that are provided by Conduent during the term of the Agreement, including without limitation, the work product described in the “Scope of Work” attached as Appendix A.

1.3.16 “**Director**” means the Director of Transportation of the SFMTA or his or her designee.

1.3.17 “**Documentation**” means the technical publications relating to the use of the Licensed Software, such as reference, installation, user, administrative and programmer manuals, and user training materials provided by Contractor to City.

1.3.18 “**Effective Date**” means the date upon which the SFMTA in writing directs the Contractor to commence the Services, and confirms that the City’s Controller has certified the availability of funds for this Agreement as provided in Section 3.1. The date on which this Agreement was executed is indicated on the first page of this Agreement.

1.3.19 “**Equipment**” means the System components listed in Appendix D that Contractor will repair or replace, as further described in Section 4 and Appendix A.

1.3.20 “**Errors, Defects and Malfunctions**” means either a deviation between the function of the Software and the Documentation furnished by Contractor for the Software, or

a failure of the Software which degrades the use of the Software or otherwise adversely impacts the operation of the CAD/AVL System.

1.3.21 “Force Majeure” means any act of God or any other cause beyond a Party’s control (including, but not limited to, any restriction, strike, lock-out, plant shutdown, material shortage, delay in transportation or delay in performance by its suppliers or subcontractors for any similar cause).

1.3.22 “Issue” means an Error, Defect, or Malfunction in Software, or a failure or malfunction of Equipment.

1.3.23 “Licensed Software” or “Software” mean one or more of the proprietary computer software programs that Contractor provided to the SFMTA under Contract 1240 or this Contract, Documentation and all related materials, all Software corrections, patches or updates thereto, and other written information received by City from Contractor, whether in machine-readable, electronic or printed form.

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

1.3.25 “Maintained Equipment” means the System Equipment listed in Appendix D, which Contractor shall maintain under this Agreement.

1.3.26 “Party” and “Parties” mean the City and Contractor either collectively or individually.

1.3.27 “Priority Category” means a priority assigned to an Error, Defect or Malfunction, designating the urgency of correcting an Error, Defect or Malfunction. Assignment of a Priority Category to an Error, Defect or Malfunction is based on City’s determination of the severity of the Error, Defect or Malfunction and Contractor’s reasonable analysis of the priority of the Error, Defect or Malfunction.

1.3.28 “Project Manager” means the project manager assigned to the Contract for the SFMTA, or his or her designated agent.

1.3.29 “Purchase Order” means the written order issued by the City to the Contractor, authorizing the Effective Date as provided in Section 3.1.

1.3.30 “San Francisco Municipal Transportation Agency”, “Agency” or “SFMTA” means the agency of City with jurisdiction over all public transit in San Francisco, as provided under Article VIIIA of the City’s Charter.

1.3.31 “Software” means Licensed Software.

1.3.32 “Radio System Contract” means SFMTA Contract 1240 between the SFMTA and Harris Radio Corporation, titled “Radio System Replacement Project Design Build

Project - Contract 1240, Document No: 00520: Design Build Design Agreement,” dated March 29, 2012 for the replacement of the SFMTA’s radio communications system.

1.3.33 “Service Fee” means the quarterly payment the SFMTA shall make to Contractor as described in Section 3.3 and Appendix B to this Agreement as full compensation for the Services.

1.3.34 “Services” means the labor, general and professional services, Software, Documentation, Software configuration and customization, training, support, System maintenance, remote on on-site System support, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Contract, as described as Base Services, Additional Services, on-site and emergency services (described Section 4 and Appendix A (“Scope of Work”)) that are necessary to maintain and ensure the continued operation and functions of the CAD/AVL System.

1.3.35 “Services Fee” means the quarterly (every 90 Days) payment SFMTA will make to Contractor for Contractor’s performance of the Base Services. See Section 3.

1.3.36 “Source Code” means the human readable compliable form of the Software provided by Contractor.

1.3.37 “Specifications” means the functional and operational characteristics of the System as described in Contractor’s current published product descriptions and technical manuals.

1.3.38 “System” means the CAD/AVL Software and ancillary equipment Contractor furnished to the SFMTA under the Radio System Contract.

1.3.39 “Work” means Services.

Article 2 Term of the Agreement

2.1 The term of this Contract shall be five years, commencing on the Effective Date, and expiring five years later, unless earlier terminated as otherwise provided herein.

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller in the form of a Purchase Order, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for

new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

3.2 Guaranteed Maximum Costs. The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5 (Modification of this Agreement).

3.3 Compensation

3.3.1 Contract Amount. Unless amended as provided in Section 11.4 (Modification of the Agreement), in no event shall the amount of this Agreement exceed **Four Million, Three Hundred Forty-Eight Thousand, Two Hundred Seventy-Two Dollars (\$4,348,272)** for the Term of this Agreement. The SFMTA shall pay Contractor for Work performed in accordance with this Agreement.

3.3.2 Payment. SFMTA shall pay Contractor the Service Fees for Base Services quarterly in advance. SFMTA shall pay Contractor for Additional Services that Contractor has performed under this Agreement as provided in Appendices A and B within 30 Days of receipt of Contractor's invoice for those completed Additional Services. Contractor shall provide SFMTA an invoice for all Services, as provided in Section 3.3.4. Hourly Rates for Additional Work and Emergency Work shall include all wages, salary costs, benefits, field office expenses, home office expenses, all overhead costs, and other direct and indirect costs, and mark-up, and profit. Travel expenses shall not be increased by mark-up and must conform to GSA reimbursement rates and costs standards.

3.3.3 Payment Obligations Limited to Satisfactory Services. Contractor is not entitled to any payments from City until SFMTA approves the Work for which Contractor seeks compensation meets the requirements of this Agreement. SFMTA shall not unreasonably withhold said approval.

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to City's Controller and SFMTA, and must include the Contract Progress Payment Authorization number. Contractor shall submit invoices electronically with each invoice containing the following information, as applicable:

1. Contract Number

2. Purchase Order Number
3. Description of the Work for which Contractor seeks compensation
4. Support Services Fee for current invoice period and amount of Fixed Fee as of date of invoice.
5. Total amount invoiced.
6. Form 7 – CMD Progress Payment Form

3.3.5 Progress Payment Form. City’s Controller is not authorized to pay invoices submitted by Contractor prior to Contractor’s submission of the SFMTA Progress Payment Form. If the Progress Payment Form is not submitted with Contractor’s invoice, SFMTA will notify Contractor of the omission. If Contractor’s failure to provide the SFMTA Progress Payment Form is not explained to SFMTA’s satisfaction, SFMTA will withhold 20 percent of the payment due pursuant to that invoice until the SFMTA Progress Payment Form is provided.

3.3.6 LBE Payment and Utilization Tracking System. Contractor shall pay LBE subcontractors within three business days as provided under Chapter 14B.7(H)(9). Within ten business days of the SFMTA’s payment of an invoice, Contractor shall confirm that all subcontractors have been paid via the B2GNow System (<https://sfmta.diversitycompliance.com/>) unless instructed otherwise by CMD. Failure to submit all required payment information to the City’s Financial System with each payment request may result in the withholding of 20% of the payment due.

3.3.7 Payment Terms

(a) **Payment Due Date.** Unless SFMTA notifies Contractor that a dispute exists, SFMTA shall endeavor to issue payment to Contractor for undisputed charges within Thirty (30) Days the date of SFMTA’s receipt of Contractor’s invoice. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted the electronic payment to Contractor.

(b) **No Interest or Late Charges.** No additional charge shall accrue against City in the event City does not make payment within any time specified in this Agreement. In no event shall City be liable for interest or late charges for any late payments.

3.3.8 Payment Process.

(a) City and County of San Francisco utilizes the Paymode-X® service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit http://portal.paymode.com/city_countyofsanfrancisco.

(b) At the option of City, Contractor may be required to submit invoices directly in City’s financial and procurement system (PeopleSoft) via eSettlement. Refer

to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through sfemployeeportalsupport@sfgov.org.

3.3.9 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.3.10 Payment Does Not Constitute Acceptance. The issuing of any payment by City, or the receipt thereof by Contractor shall not constitute or imply acceptance of Work by City, waive any requirement of this Agreement, or in any way compromise or amend Contractor's obligation to reperform or replace unsatisfactory Work although the unsatisfactory character of such Work may not have been apparent or detected at the time such payment was made. Work that does not conform to the requirements of this Agreement may be rejected by City and in such case must be reperformed or replaced (as applicable) by Contractor without delay. No charges shall be incurred under this Agreement for Additional Services, nor shall any payments become due to Contractor until Contractor has completed said Additional Services as agreed. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation of this Agreement. Payment for Services shall not constitute or be deemed a waiver of any provision of this Agreement.

3.3.11 Equipment Acceptance. Contractor shall deliver Equipment the SFMTA purchases under this Agreement to the location specified by SFMTA or other location the SFMTA may designate. A SFMTA representative shall inspect the delivered materials to confirm that the ordered Equipment has been delivered undamaged. Contractor shall replace Equipment damaged in transit at no additional charge to SFMTA. SFMTA shall pay Contractor for accepted Equipment as provided in this Section 3.3. Contractor shall bear the risk of loss of Equipment in transit, and shall replace any Equipment that is lost or damaged prior to delivery to and acceptance by SFMTA. SFMTA shall bear the risk of loss or damage to Equipment that is in SFMTA's possession and control following inspection and acceptance.

3.3.12 Withhold Payments. If Contractor fails to provide goods and/or Services in accordance with Contractor's obligations under this Agreement, City may withhold any and

all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.4 Audit and Inspection of Records. Contractor agrees to make available to City, during regular business hours, existing records relating to the Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records of Services provided under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 Payment of Prevailing Wages

3.5.1 Covered Services. City and Contractor do not intend that the Services shall include any work that constitutes construction trade work or Public Works as defined in San Francisco Administrative Code Chapter 6 or applicable California laws. SFMTA will separately contract with licensed construction contractor(s) to perform any work related to the Radio System that requires a contractor's license under the California Business and Professions Code or other applicable California law. But should any of the Services be deemed by any agency with relevant regulatory authority to constitute trade work covered by the provisions of San Francisco Labor and Employment Code Article 102 or applicable State law (collectively, "Covered Services"), then the wages and benefits rates referenced in Section 3.7.2 shall apply to this Agreement. The provisions of San Francisco Labor and Employment Code Article 102 are incorporated into this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

3.5.2 Wage Rates. The latest prevailing wage rates for private employment on public works contracts and Covered Services, as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations ("DIR"), as such prevailing wage rates may be changed during the term of this Agreement, are incorporated as provisions of this Agreement. Copies of the prevailing wage rates as fixed and determined by the Board of Supervisors are available from the Office of Labor Standards and Enforcement ("OLSE") and on the Internet at <http://www.dir.ca.gov/DLSR/PWD> and <http://sfgov.org/olse/prevailing-wage>. Contractor agrees that it shall pay not less than the prevailing wage rates, as fixed and determined by the Board, to all workers employed by Contractor who perform Covered Services under this Agreement.

3.5.3 Subcontract Requirements. As required by San Francisco Labor and Employment Code Article 102, Contractor shall insert in every subcontract or other arrangement that it may make for the performance of Covered Services under this Agreement, a provision that said subcontractor shall pay to all persons performing labor in connection with Covered Services

under said subcontract or other arrangement not less than the highest general prevailing rate of wages as fixed and determined by the Board of Supervisors for such labor or services.

3.5.4 Posted Notices. As required by Section 1771.4 of the California Labor Code, Contractor shall post job site notices prescribed by DIR at all job sites where Covered Services (that are subject to San Francisco Administrative Code Section 6.22) are to be performed.

3.5.5 Payroll Records. As required by San Francisco Labor and Employment Code Article 102 and Section 1776 of the California Labor Code, Contractor shall keep or cause to be kept complete and accurate payroll records for all trade workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services under this Agreement, including apprentices, his or her classification, a general description of the services each worker performed each Day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall undertake the performance of any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by City and its authorized representatives and the DIR.

3.5.6 Certified Payrolls. Certified payrolls shall be prepared pursuant to Administrative Code Section 6.22(e)(6), San Francisco Labor and Employment Code Article 102, and California Labor Code Section 1776 for the period involved for all employees, including those of subcontractors, who performed labor in connection with Covered Services. Contractor and each subcontractor performing Covered Services shall submit certified payrolls to City and to the DIR electronically. Contractor shall submit payrolls to City via the reporting system selected by City. The DIR will specify how to submit certified payrolls to it. City will provide basic training in the use of the reporting system at a scheduled training session. Contractor and all subcontractors that will perform Covered Services must attend the training session. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to City.

3.5.7 Compliance Monitoring. Covered Services are subject to compliance monitoring and enforcement of prevailing wage requirements by the California Department of Industrial Relations (DIR) and/or City's Office of Labor Standards Enforcement (OLSE). Contractor and any subcontractors performing Covered Services will cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements, and agrees to take the specific steps and actions as required by San Francisco Labor and Employment Code Article 102. Steps and actions include but are not limited to requirements that: (i) Contractor will cooperate fully with the OLSE Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements

and other labor standards imposed on Public Works Contractors by the Charter and Chapter 6 of the San Francisco Administrative Code; (ii) Contractor agrees that the OLSE Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (iii) Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iv) Contractor shall prominently post at each job-site a sign informing employees that the Services are subject to City's Prevailing Wage requirements and that these requirements are enforced by the OLSE Enforcement Officer. (v) that the OLSE Enforcement Officer may audit such records of Contractor as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the Charter and this Chapter on Public Works Contractors. Failure to comply with these requirements may result in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

3.5.8 Remedies. Should Contractor, or any subcontractor who shall undertake the performance of any Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Agreement, subcontract or other arrangement for the Covered Services, the general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in San Francisco Labor and Employment Code Article 102 and/or California Labor Code Section 1775. When certifying any payment which may become due under the terms of this Agreement, City will deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services stated in Appendix A (Scope of Work). Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5 (Modification of this Agreement).

4.2 Services and System Performance Standards. Contractor agrees to perform the Services to maintain the CAD/AVL System so that it performs as well or better as the CAD/AVL System performed when the SFMTA accepted the Radio System (which included the CAD/AVL System) under the Radio System Contract (Contract 1240). The System shall meet the following reliability and availability standards specified in Appendix A.

4.3 Qualified Personnel. Contractor shall use only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized

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

4.4 Subcontracting

4.4.1 Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All subcontracts must incorporate the terms of Article 10 (Additional Requirements Incorporated by Reference) of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.5 Independent Contractor; Payment of Employment Taxes and Other Expenses

4.5.1 Independent Contractor. For the purposes of this Section 4.5, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this Section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall

remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.5.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.5 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this Section.

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

4.7 Warranty. Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures

and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement. Contractor warrants that the Services provided under this Agreement will not reduce the performance or reliability of the CAD/AVL System below the its levels of performance and reliability existing as of the Effective Date of this Agreement.

4.8 Contractor warrants to SFMTA that new replacement Equipment that Contractor provides under this Agreement shall be correct and serve its intended purpose, free from defects in material and workmanship and shall conform to its published specifications for the term of this Agreement. Contractor shall repair or replace malfunctioning Equipment at no additional charge to SFMTA for one year commencing on the installation of the accepted Equipment to a transit vehicle or to a Site. Warranty shall not commence upon delivery or run during any period that the accepted Equipment is in storage prior to installation. Contractor shall not use “grey market” equipment. Contractor shall pay (or credit to the SFMTA) all shipping charges incurred in returning defective Equipment to Contractor's plant and shipping repaired or replacement Equipment to SFMTA. All costs for warranty repair and replacement of Equipment are included in the Services Fee.

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 Required Coverages. Without in any way limiting Contractor's liability pursuant to the “Indemnification” section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Commercial General Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence, “Combined Single Limit” for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than One Million Dollars (\$1,000,000) each accident, injury, or illness.

(d) Professional Liability Insurance, applicable to Contractor's profession, with limits not less than One Million Dollars (\$1,000,000) for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Technology Errors and Omissions Liability coverage, with limits of Five Million Dollars (\$5,000,000) for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the

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

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

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

(f) Cyber and Privacy Insurance with limits of not less than Five Million Dollars (\$5,000,000) per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

5.1.2 Additional Insured Endorsements

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) The Commercial Automobile Liability Insurance policy must be endorsed to include (i) Additional Insured Endorsement naming as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees; and (ii) Form MCS-90 for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980.

5.1.3 Waiver of Subrogation Endorsements

(a) The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

5.1.4 Primary Insurance Endorsements

(a) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.5 Other Insurance Requirements

(a) Thirty days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment, for which no less than 10 Days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

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

(c) 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.

(d) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements from insurers with ratings comparable to A-, VIII or higher that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

5.2 Indemnification. Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or

otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's negligent performance of this Agreement or willful misconduct, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

5.2.1 Limitations. No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities.

5.2.2 Intellectual Property Infringement. Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, Software, Equipment, or other deliverables supplied in the performance of Work. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

Article 6 Liability of the Parties

6.1 Liability of City. City's payment obligations under this Contract shall be limited to the payment of the compensation provided for in Article 3, above.

6.2 Liability for Use of Equipment. City shall not be liable for any damage to persons or property resulting from Contractor's use, misuse or failure of any equipment or

tools used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment or tools are furnished, rented or loaned by City.

6.3 Limitations on Liability .

6.3.1 The City, its boards and commissions, and all of their officers, agents, members, employees, and authorized representatives shall have no liability to Contractor for any type of special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising under or related to the Work or this Contract or under any cause of action related to the subject matter of this Contract, whether in contract, tort (including negligence), strict liability, or otherwise. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension, cancellation or rescission of the Work or this Contract, negligence or strict liability by the City, its boards and commissions, and their representatives, consultants or agents.

6.3.2 Except as stated here, Contractor shall have no liability to City for any type of special, consequential, incidental or punitive damages arising out of or connected with Contractor's performance of the Work.

6.3.3 Contractor's liability to the City for breach of contract or negligence under this Agreement shall not exceed the value of the maintenance fees the SFMTA has paid Contractor under this Agreement in the year the breach of contract or negligent act occurred.

6.3.4 The limitations on Contractor's liability stated in this Section 6.3 applies under all circumstances including, but not limited to, the breach, completion, termination, suspension or cancellation of the Work under this Contract, and negligence or strict liability of Contractor. This limit of liability shall NOT, however, apply to, limit or preclude:

(a) Contractor's obligation to pay Liquidated Damages imposed by ordinance or statute;

(b) Damages caused by Contractor's gross negligence, reckless conduct, willful acts or omissions, fraud or illegal or unlawful acts;

(c) Contractor's obligations to indemnify and defend the City and other indemnified parties as set forth in Section 5.2;

(d) Contractor's liability damages that fall within the insurance coverages required under the Contract;

(e) Contractor's liability for statutory damages imposed by the City upon Contractor under City Ordinances and Municipal Codes;

(f) Fines, penalties and statutory damages, including punitive damages, treble damages, and statutory attorney fees and costs;

(g) Contractor's warranties and guarantees under the Contract Documents;

(h) Damages and other liability arising under claims by third parties for loss or damage to property or personal injuries, including wrongful death;

(i) Liability for violation of environmental regulations and laws; and

(j) Damages and other liability for infringement of any copy right, patent, or other intellectual property right.

Article 7 Payment of Taxes

7.1 Contractor to Pay All Taxes . Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor’s compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Possessory Interest Taxes. Contractor acknowledges that this Agreement may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

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

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

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code Section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

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

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

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor thirty (30) Days prior written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

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

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Work, equipment or other items.

(c) At the SFMTA's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, the SFMTA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to the SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any Work that the SFMTA designates to be completed prior to the date of termination specified by the SFMTA.

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

8.1.3 Within thirty (30) Days after the specified termination date, Contractor shall submit to the SFMTA an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable compensation to Contractor, without for all Work performed prior to the specified termination date, for which the SFMTA has not already tendered payment, and the total of any Contractor costs resulting directly from the termination. Lost profits are not costs and the SFMTA shall not compensate for lost profits. The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.

(b) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to the SFMTA, and any other appropriate credits to the SFMTA against the cost of the Work or other Work.

8.1.4 In no event shall the City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by the SFMTA, except for those costs specifically enumerated and described in Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, the SFMTA may deduct: (i) all payments previously made by the SFMTA for Work covered by Contractor's final invoice; (ii) any claim which the SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4.

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

8.2 Termination for Default; Remedies.

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

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

3.3.9	Submitting False Claims
4.6	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.10	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws
Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other material term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein.

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

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

8.2.2 To the extent that City is aware of any Event of Default or other breach of the Agreement by Contractor, the City shall provide Contractor written notice of the Event of Default or other breach of the Agreement. Contractor shall have 30 Days from the date of such notice to cure its default or breach. If it is not possible for Contractor to cure said default or breach within that time, Contractor shall so inform the City in writing and shall commit to a date by which Contractor will cure said default or breach, subject to the City's approval. Where it is evident that Contractor's default or breach is not possible to cure, the 30-Day cure period shall not apply.

8.2.3 Following expiration of the 30-Day cure period described in the preceding section, on and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. If Contractor defaults and does not pay the City's costs and expenses incurred in effecting such a cure, then the City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is

incorporated into this Agreement by reference, or into any other agreement with the City. This Section 8.2.2 shall survive termination of this Agreement.

8.2.4 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.5 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.3 Non-Waiver of Rights. The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

8.4 Rights and Duties upon Termination or Expiration.

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

3.3.3	Payment Limited to Satisfactory Services
3.4	Audit and Inspection of Records
3.3.9	Submitting False Claims
Article 5	Insurance and Indemnity
Article 6	Liability of the Parties
Article 7	Payment of Taxes
8.1.6	Payment Obligation
Article 9	Rights in Deliverables and Software Licenses
11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability
Article 13	Data and Security

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1 above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any Work in progress, completed Work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed Work which, if this Agreement had been completed, would have been required to be furnished to City.

8.5 Discontinuance of Services. Contractor agrees that in the event it ceases to sell CAD/AVL Systems for transit applications, or otherwise ceases to market and/or provide proprietary Software, Equipment or maintenance Services for the System, and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, Contractor shall provide City, without charge, one (1) copy of the then-current Source Code for all of the programs and all supporting Documentation for the Software then operating and installed at City's locations. If City should obtain the Source Code and the Documentation pursuant to this section, the only use made of the Source Code and the Documentation will be for the SFMTA's maintenance of the System. Contractor shall also make available for City to purchase at reasonable commercial rates all proprietary Equipment that SFMTA deems is necessary for the Agency to continue to operate the System for a period of three years, to provide the SFMTA sufficient time to budget, plan, and acquire a replacement to the System.

8.6 This Agreement Does Not Modify Contract 1240. This Agreement does not modify or waive any provision of the Radio System Contract (SFMTA Contract 1240), or any provision of the Radio System Contract that by the terms of that agreement survives the termination or expiration of the Radio System Contract.

Article 9 Rights In Deliverables and Software Licenses

9.1 Ownership of Results. Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors solely for the purposes of maintaining the System or performing the Services, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 Software Licenses and Use

9.2.1 License. Contractor has licensed to City the CAD/AVL Software and Documentation and related software and documentation that Contractor provided to SFMTA under the Radio Contract and any subsequent contract between Contractor and the City, including but not limited to the Task Order Contract, SFMTA Contract 2018-49.

9.2.2 Additional Licenses. For Software that Contractor provides under this Agreement or has provided under other contracts that is not covered by the preceding Section 9.2.1, Contractor grants City a non-exclusive, non-transferable, perpetual, restricted license to use the Software purchased under this Agreement from the date of full payment for same, but only for City's its own operation and maintenance of the Radio System. City has no right to grant sublicenses. Contractor warrants that it has the title to and/or authority to grant said license(s) and sublicenses(s) to City. For avoidance of doubt, the license rights granted by the Radio Contract, this Agreement, and the Task Order Agreement, and any subsequent agreement

between the Parties concerning the CAD/AVL System and its Software (Documentation) shall be identical. Any right(s) granted to SFMTA under one agreement shall be applied to all agreements between the Parties concerning the System and Software, so that there is no gap, conflict or discontinuity in licensed rights from one agreement to another.

9.2.3 Third-Party Software. City and County of San Francisco shall be listed as the licensee and authorized end-user on each future provided Software license, where applicable as stated in Appendix A. All such licenses for such third-party software that Contractor provides to City under this Agreement shall grant to City a non-exclusive, non-transferable, perpetual, license to use said Software for the operation and maintenance of the Radio System. City shall have no right to grant sublicenses. .

9.2.4 Software is Proprietary to Contractor.

(a) Contractor warrants that it has the title to and/or authority to grant said license(s) and sublicenses(s) of the Software to City.

(b) Notwithstanding anything to the contrary contained in this Agreement, it is understood that City receives no title or ownership rights to Software that Contractor provides City under this Agreement, and all such rights shall remain with Contractor or its suppliers.

(c) City agrees that the Software provided to it by Contractor under this Agreement shall, as between the Parties, be treated as proprietary and a trade secret of Contractor or its suppliers and be subject to the provisions of Article 13 (“Data and Security”).

9.2.5 Restrictions on Use. City is authorized to use the Software only for City’s municipal purposes. City agrees that it will, through its best efforts, not use or permit the Software to be used in any manner, whether directly or indirectly, that would enable any other person or entity not authorized by this Agreement, to use the Software.

9.2.6 Disaster Recovery Copy. For the purpose of any bona fide City disaster recovery plan or with respect to the use of computer software in its municipal operations, City may make one copy of the Software for archival purposes and use such archival copy to restore use of the Software on a site owned or controlled by City. The use of such archival copy shall be limited to (1) the purpose of conducting limited testing of the disaster recovery plan’s procedures and effectiveness and (2) during any period subsequent to the occurrence of an actual disaster during which City cannot operate the Software on the existing site.

9.2.7 Transfer of Products. City may move the Software and supporting materials to another City site.

9.2.8 Documentation. Contractor shall provide the SMFTA with a digital copy of the Documentation for all Software it provides the SFMTA under this Agreement. . Contractor grants to City permission to duplicate all printed Documentation for City’s municipal use.

9.2.9 Proprietary Markings. City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Software or any related materials or Documentation.

9.2.10 Authorized Modification. City shall also be permitted to develop, use and modify Application Program Interfaces (“APIs”), macros and user interfaces. For purposes of this Agreement, such development shall be deemed an authorized modification. Contractor shall make no claim under this Agreement to ownership of any APIs, macros or other interfaces developed by or at the direction of City.

9.2.11 Third-Party Programs. Contractor has no general objection to City’s use of third-party programs in conjunction with the Software licensed under this Agreement. Contractor recognizes that City has and will license third party programs that City will use with Contractor’s products. Based on information provided to Contractor as to the Effective Date, Contractor agrees that such use does not constitute an unauthorized modification or violate the licenses granted under this Agreement.

9.2.12 Delivery. Contractor shall deliver one copy of each of the Software products (including Updates) in computer readable form, as provided in Appendix A.

9.2.13 Installation. SFMTA will install the Software and Equipment, except when SFMTA requests Contractor to perform installation as part of Base Services.

9.2.14 Risk of Loss. Contractor shall replace any Software or Equipment provided under this Agreement if any of the Software or Equipment are lost or damaged during shipment or before installation is completed, at no additional charge to City.

9.2.15 Prohibited Use. City shall not:

(a) make any copies of Software provided under this Agreement or parts thereof, except for archival back up purposes and when making copies as permitted herein, shall transfer to the copy/copies any copyright or proprietary legends or other marking on said Software; or

(b) use said Software for any other purpose than permitted in this Section; or

(c) translate, reverse engineer, adapt, arrange or error-correct or make any other alterations to said Software.

9.2.16 Survival. The obligations of City under this Section shall survive the termination or expiration of this Agreement.

9.2.17 Contractor’s Default. Failure or refusal of Contractor to perform or do any act herein required shall constitute a default. In the event of any default, in addition to any other remedy available to City, this Contract may be terminated by City upon ten Days written notice. Such termination does not waive any other legal remedies available to City.

9.2.18 Warranties: Right to Grant License. Contractor hereby warrants that it has title to and/or the authority to grant a license of the Software to City.

9.2.19 Warranties: Conformity to Specifications. Contractor warrants that when the Software specified and all updates and improvements to the Software that Contractor provides under this Agreement will be free from defects as to design, material, and workmanship and will perform in accordance with Contractor's published specifications.

9.2.20 Discontinuance of Services. Contractor agrees that in the event it ceases to sell CAD/AVL systems for transit applications, or otherwise ceases to market and/or provide proprietary Software, Equipment or maintenance Services for the CAD/AVL System, and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, Contractor will provide City, without charge, one (1) copy of the then-current Source Code for all of the programs and all supporting Documentation for the Software then operating and installed at City's locations. If City should obtain the Source Code and the Documentation pursuant to this section, the only use made of the Source Code and the Documentation will be for the SFMTA's maintenance of the System. Contractor shall also make available for City to purchase at reasonable commercial rates all proprietary Equipment that SFMTA deems is necessary for the Agency to continue to operate the System for a period of three years, to provide the SFMTA sufficient time to budget, plan, and acquire a replacement to the System.

9.2.21 License of Documentation. Contractor shall supply Documentation to City for Equipment and Software that Contractor provides to SFMTA under this Agreement. City shall have the right to use the Documentation for the operation and maintenance of the Radio System. City may make limited copies of the Documentation to the extent necessary to maintain one (1) archive version and as required to train its employees in the operation and maintenance of the Radio System provided always that all copyright, confidentiality or proprietary legends or other markings shall be transposed onto such permitted copies. The Documentation and all permitted copies thereof shall at all times be treated as proprietary and a trade secret of Contractor or its suppliers and be subject to the provisions of this Agreement for Confidential Information.

Article 10 Additional Requirements Incorporated by Reference

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

10.2 Conflict of Interest. By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1,

Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (a) asking such applicants about their current or past salary or (b) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Article 141. Information about and the text of San Francisco Labor and Employment Code Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of Article 141, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements

10.5.1 Non Discrimination in Contracts. Contractor shall comply with the provisions of San Francisco Labor and Employment Code Article 131 and 132. Contractor shall incorporate by reference in all subcontracts the provisions of those Articles and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in those Articles.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Labor and Employment Code Article 131.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in Article 131.2.

10.6 Local Business Enterprise and Non-Discrimination in Contracting

Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (LBE Ordinance). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

10.7 Minimum Compensation Ordinance.

Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

10.8 Health Care Accountability Ordinance.

Contractor shall comply with the requirements of San Francisco Labor and Employment Code Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Article 121. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Article 121, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section 10.8.

10.9 First Source Hiring Program.

Contractor shall comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace.

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

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation.

Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) and the California Drug-Free Workplace Act of 1990, Cal. Gov. Code, § 8350 et seq.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (a) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (c) a candidate for that City elective office, or (b) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor’s board of directors; Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Consideration of Criminal History in Hiring and Employment Decisions

10.12.1 Contractor agrees to comply fully with and be bound by all of the provisions of San Francisco Labor and Employment Code Article 142 (Article 142) (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Article 142.

10.12.2 The requirements of Article 142 shall only apply to a Contractor’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Article 142 shall not apply when the application in a particular context

would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

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

Article 11 General Provisions

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

To City: David Rojas
Project Manager II
San Francisco Municipal Transportation Agency
1 South Van Ness, 3rd Floor
San Francisco, CA 94103
david.rojas@sfmta.com

To Contractor: John Fischer
Director, Account Management
Conduent Transport Solutions, Inc.
7160 Riverwood Drive, Columbia, Maryland 21046
john.fischer@conduent.com

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

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

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

11.4 Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §7920 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such

records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1 (Notices to Parties) regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 Dispute Resolution Procedure

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

11.6.2 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.7 Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue

for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco, California.

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

11.9 Entire Agreement. This Contract sets forth the entire agreement between the Parties as to the Services described herein, and except as expressly stated herein supersedes all other oral or written provisions and agreements concerning the Services to be provided under this Agreement. This Agreement may be modified only as provided in Section 11.5 (Modification of this Agreement). This Agreement does not modify the Parties agreement, “As-Needed CAD/AVL Professional Work,” SFMTA Contract No. 2018-49, dated April 10, 2019, or any surviving obligations and rights under the Radio System Contract (SFMTA Contract 1240).

11.10 Compliance with Laws. Contractor shall keep itself fully informed of the City’s Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.11 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.

11.12 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

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

without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

11.14 Force Majeure. Dates or times by which either Party is required to perform under this Agreement, excepting the payment of any fees or charges due hereunder, shall be postponed to the extent that any party is prevented from meeting them by causes beyond its reasonable control that the party could not have reasonably anticipated and avoided or otherwise mitigated to avoid delay (“Unavoidable Delay”). (See Section 11.15.1.)

11.15 Delays and Extensions of Time.

11.15.1 Unavoidable Delays.. The term “Unavoidable Delay” shall mean an interruption of the Work beyond the control of Contractor that could not have been avoided by Contractor's exercising due care, prudence, foresight, and diligence. If Contractor claims that its performance of the Services has been delayed due to a Force Majeure event or other Unavoidable Delay, Contractor shall demonstrate that the Unavoidable Delay actually extends the completion date or Milestone. Delays attributable to and within the control of a Subconsultant, Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

(a) Contractor will be entitled to a non-compensable extension of the time to perform delayed Services only for the following types of Force Majeure or Unavoidable Delay: acts of God; acts of the public enemy; adverse weather conditions; fires; floods; windstorms; hurricanes, tornadoes; earthquakes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sit-downs; slowdowns; other labor trouble; labor shortages; inability of Contractor to procure labor or materials that are not caused by Contractor's lack of due diligence and planning; material shortages; fuel shortages; freight embargoes; accidents; acts of a government agency; priorities or privileges established for the manufacture, assembly or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority; and inability to procure or failure of public utility service.

(b) Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or is threatening to delay the timely performance of the Services, Contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to City.

(c) In addition, Contractor shall take all appropriate measures to eliminate or minimize the effect of such labor dispute on the current, City-approved progress schedule, including but not limited to such measures as: promptly seeking appropriate injunctive relief; filing appropriate charges with the National Labor Relations Board under the applicable provisions of the Labor Management Relations Act of 1947, as amended; filing appropriate damage actions; taking such measures as establishing a reserved gate, as appropriate; if reasonably feasible, seeking other sources of supply or service; or any other measures that may

be appropriately utilized as deemed by City to limit or eliminate the effect of the labor dispute on the Work. To the extent Contractor fails to initiate appropriate measures, it is not entitled to an extension of Contract Time. In addition, any delay impact caused by said failure on the progress schedule will be considered a Contractor-caused delay under any and all applicable provisions of the Agreement.

11.15.2 Avoidable Delays. The term "Avoidable Delay" shall include but is not limited to the following:

(a) Any delay which could have been avoided by the exercise of due care, prudence, foresight and diligence on the part of Contractor including rescheduling the Work or organizing the Work (including procuring materials and Equipment) so that the critical path is not impacted by the delay or such impacts are minimized;

(b) Any delay in the performance of parts of the Work, which may in itself be Unavoidable, but which does not necessarily prevent or delay the performance of other parts of the Work, nor delay the specified Substantial Completion date;

(c) Any delay caused by the untimely review by Contractor of the Criteria Package or other Agreement.

11.15.3 Notice of Delay.

(a) Contractor shall promptly notify City in writing of all anticipated delays in the performance of the Work and, in any event, promptly upon the occurrence of a delay. City may take steps to prevent the occurrence or continuance of the delay, and City may determine to what extent any Milestone is delayed thereby.

(b) Said notice shall constitute an application for an extension of time only if it requests such time extension in writing that sets forth Contractor's estimate of the additional time required together with a full recital of the causes of Unavoidable Delays relied upon, Contractor must submit that notice to City within seven (7) Days of the event which Contractor contends affected the performance of the Work.

(c) City's determination of whether an extension of time will be granted will be based on Contractor's demonstration to City's satisfaction that such Unavoidable Delays will extend Contractor's current critical path on the current, City-approved updated progress schedule or require the formulation of a new extended critical path.

(d) If Contractor does not submit a timely Notice of Potential Contract Claim, Contractor thereby admits the occurrence had no effect on the length of its duration of Work, waives any Claim based on the occurrence, and stipulates that no extension of time is necessary. Contractor understands and agrees that in failing to provide timely notice, no extension of time or adjustment of the Contract Amount will be granted by City.

11.15.4 Extensions of Time

(a) In the event that SFMTA deems it necessary to extend the time for completion of the Services to be done under this Agreement beyond the schedule for delivery of Services agreed by the parties, such extensions shall in no way release or reduce any guarantees or warranties given by Contractor under the provisions of the Agreement and shall extend said warranties so that City enjoys the full benefit of them as if no delay had occurred.,

(b) The length of any extension of time shall be limited to the extent that the commencement, performance and completion of the Services are delayed by the event as agreed by City.

(c) Granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of City of the right to collect liquidated damages for other delays or to collect other damages or to pursue other rights and interests to which City is entitled, if applicable.

Article 12 SFMTA Specific Terms

12.1 Large Vehicle Driver Safety Training Requirements

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

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

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information

13.1.1 Protection of Private Information . If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 Confidential Information . In the performance of Services, Contractor may have access to, or collect on City’s behalf, City’s proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City’s behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

13.2 Ownership of City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City.

13.3 Management of City Data and Confidential Information

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

13.3.2 Disposition of Confidential Information. Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than 30 Days, return all Data given to or collected by Contractor on City’s behalf, which includes all original media.

Once Contractor has received written confirmation from City that the City Data has been successfully transferred to City, Contractor shall within 10 Days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors' environment(s), work stations that were used to process the Data or for production of the Data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five Days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88, or the most current industry standard.

Article 14 MacBride Principles - Northern Ireland

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

Article 15 Included Appendices

The appended documents listed below are incorporated to this Agreement:

Appendix A – Scope of Work

Appendix B – Calculation of Compensation

Appendix C - Root Cause Analysis Template

Appendix D - Maintained Equipment List

Signatures on are the following page.

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

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Jeffrey P. Tumlin Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary to the Board</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ Annie Smiddy Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Conduent Transport Solutions, Inc.</p> <hr/> <p>Jean-Charles Zaia Vice President, General Manager 12410 Milestone Center Drive Suite 500 Germantown, MD 20876</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier Number: 0000025042</p>
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Appendix A

SCOPE OF WORK

1. Summary Description of Services

The Services Contractor shall provide include remote preventative maintenance, monitoring, and troubleshooting for the CAD/AVL System Software and Equipment, as described in this Appendix A, so that the System performs at the same or better level than the CAD/AVL System performed when the City accepted the Radio System and CAD/AVL System under the Radio System Contract (SFMTA Contract 1240) in March 2019. All Base Services described in this Appendix A shall be fully compensated by the SFMTA's payment of the quarterly Service Fee, as provided in Section 3.3; Contractor shall not charge any additional fees or costs for performing the Base Services described in this Appendix A. As requested by SFMTA, Contractor shall also perform Additional Services at the hourly rates stated in Appendices for maintenance support services not covered under Base Services.

2. Contractor's Maintenance Support Base Services

Contractor shall provide the following Base Services to maintain the CAD/AVL System:

a. Remote Alarm Monitoring – Contractor shall securely connect monitored Equipment to a central monitoring station, appropriate to monitor the key system components. Contractor will ensure that the alerts and alarms that are sent out are also sent to key SFMTA personnel. SFMTA may also request to see the monitoring configurations to understand the thresholds of trigger, and other key elements pertaining to the system monitoring. Conduent will ensure all alarms are addressed as their priority dictates. SFMTA may request to know how any alarms and/or alerts have been addressed. Alarms shall be reported and summarized at regular issue tracking meeting.

b. Software Updates and Patches - Contractor shall provide to the SFMTA, with SFMTA approval, the most recently released operating system and application Software Updates for the System as they become available, and no less often than every three months. Contractor shall (1) provide Software Updates to correct any Programming Error (2) provide Software Updates anytime that Contractor provides them to another customer to address security vulnerabilities and fix Software bugs. Software Updates shall be certified by Contractor and put into transit revenue service through SFMTA's change control processes, described in Section 2.g, below. SFMTA shall install all Software.

c. Issue Tracking and Meeting - Contractor shall lead meetings every two weeks, or as otherwise mutually agreed to, with SFMTA to discuss System and Software maintenance Issues. Contractor shall keep meeting minutes and shall document open technical issues, actions or tasks assigned during the meeting, associated deadlines, and persons responsible for performing Work and tasks addressed in the meetings. Contractor shall

record decisions, actions, meeting attendance, and provide meeting minutes within three business days of the meeting.

d. Equipment Returns and Repairs – Equipment that Contractor will replace or repair is listed in Appendix D. SFMTA will notify Contractor when Equipment has failed and SFMTA has replaced it with a unit from the spares inventory. Contractor shall provide a Return Material Authorization (RMA) within two (2) business days from the date of receipt of SFMTA's notice. Contractor shall collaborate with SFMTA and others to facilitate collection and shipment of RMA Equipment. Contractor shall inspect, repair or replace, test, and ship equipment back to SFMTA within 30 Days from the date Contractor received it. Contractor warrants that Equipment repaired by Contractor shall be free from defects in materials and workmanship for a period of not less than one year for the same failed component.

e. Technical Assistance Center - Contractor shall provide SFMTA a toll-free number for Conduent's Technical Assistance Center to report System, Software and Equipment Issues. Contractor shall log and track each service request through resolution of the reported Issue. The service request phone line shall be available 24 hours per Day, every Day of the year. Issues shall be tracked as part of Issue Tracking and Meeting activity. In the event the failure is not a system wide issue, SFMTA should send an email request to TMSSupport@conduent.com. A response will be given within one business day.

f. Root Cause Analyses and Corrective Actions and Reports - Contractor shall perform a root cause analysis and all corrective action for any Critical/High Error or Issue as needed to return the System to normal operation. When requested by the SFMTA, Contractor shall provide a report to SFMTA within five Days of Issue arising explaining the root cause of the Issue and how it was resolved. If the Issue has not been resolved, Contractor shall provide a report on its progress in resolving the Issue, suspected root cause of the Issue, workaround, and estimated time to resolve the Issue. Contractor shall use SFMTA's template for the report. Root Cause Analysis scope shall include determinations that the root cause lies in an outside interfacing system.

g. Change Control; Planned and Emergency Work Notice. Contractor shall participate in SFMTA's change control process for all changes made to the System or the Software that are not Emergency Work. Contractor shall obtain approval from SFMTA at least 10 Business Days before commencing any Planned Work on the System. Contractor shall provide with its work notice a work plan describing the personnel, staging, backup process, step-by-step installation plan, and regression test procedures to be used, and the process to return the System to previous configuration if required. The step-by-step installation plan shall include all activities, start time, estimated duration of each activity, activities' impacts on the CAD/AVL System and other SFMTA systems, risk to the CAD/AVL System, and estimated recovery time to previous state for the failure of any step in the plan. Contractor shall provide the SFMTA notice of Emergency Work before commencing the work.

h. Obsolescence and End of Support Report. Contractor shall provide a yearly report, on the anniversary of the Effective Date of this Agreement, identifying Equipment, Software and other System components that Contractor anticipates may become obsolete. Obsolete Equipment and Software are those elements of the System for which Contractor will cease providing support or, will become incompatible with the System due to technology development, or for which replacements will become unavailable. Contractor shall provide not less than one years' notice of any Software or Equipment obsolescence, suggest alternatives and System upgrades, and provide the SFMTA all known information as to the impact of the obsolescence on the System. The report shall identify mitigation strategies to replace obsolete Equipment and Software and any necessary changes to the System that may be needed to accommodate those replacements, which shall be subject to approval through SFMTA's change management process.

3. Required Response to Issues

- a. For any Issue, Contractor shall inform SFMTA the nature of the failure via email, the cause (if known), the status of the System, and the estimated time by which Contractor will provide a Fix, a Patch or a Workaround. Contractor shall escalate resolution of the issue to personnel with successively higher levels of technical expertise until the Issue is corrected.
- b. Issue response and resolution values are measured from time SFMTA informs Conduent of the issue.
- c. Contractor shall support SFMTA efforts to troubleshoot Issues which may have root causes in data systems that are interfaced to the CAD/AVL System, such as the L3Harris Radio System, and NextMuni Customer Information System.
- d. Contractor shall provide SFMTA Software Issue correction in accordance with Actions listed below, based on SFMTA’s determination of the Issue/ Error Priority Classification (EPC, as shown in the following chart) of the Software Issue, (communicated when SFMTA notifies Contractor of the Issue) and Contractor’s and SFMTA's agreement of the Classification of the Issue,.

Issue/Error Priority Classification (EPC) / Description for reporting to TMS	Action(s) from TMS <i>(Please refer to the Maintenance and Support Agreement for Response Times)</i>
<p>EPC 1 – CRITICAL/HIGH</p> <p>The Issue is classified as Critical/High if any of TMS provided equipment or software fails causing any of the following to occur:</p> <ul style="list-style-type: none"> • Fleet wide data communication to vehicles is not available. (Critical) • Fleet wide Emergency Alarm/Panic capability is not available (High) • Basic CAD/AVL capability for the fleet is not operational. (Affecting ALL Operations) (High) • Missing or inaccurate location or trip data in AVL reports 	<p>Expected response: Initial contact will be made via phone; subsequent contact may be made using most efficient communication method based on the nature of the problem:</p> <p>SFMTA will call TMS Support Hotline, 1-888-ORB-TRAC</p> <p>Every attempt will be made by TMS to resolve the error immediately (i.e. allocate as many resources as are required to return the system to a state of operation that is no longer affecting revenue service). TMS will give the priority necessary to ensure expedient resolution and devote its best efforts and resources to correction of errors in this category.</p> <p>A “fix” may be a “work around” until a more permanent solution can be obtained. At which time an action plan will be sent to SFMTA. Plan will contain expected resolution timeframe.</p> <p>A Clientele Tracking number will be assigned for status purposes and SFMTA must submit an System Deficiency Report (SDR).</p>

Issue/Error Priority Classification (EPC) / Description for reporting to TMS	Action(s) from TMS <i>(Please refer to the Maintenance and Support Agreement for Response Times)</i>
<p>EPC 2 – MEDIUM PRIORITY</p> <p>The Issue is classified as a Medium Priority Issue if any of TMS provided equipment or software on board a transit vehicle, or fixed end, dispatch, etc. fails and the sub-system cannot be fixed by the swapping out of components.</p>	<p>Expected response: Initial contact will be made via phone. Additional responses will be made by the most efficient communications method for the moment. Communication will be followed by an e-mail response to SFMTA stating the status and action plan:</p> <p>SFMTA should call TMS Support Hotline, 1-888-ORB-TRAC (For full system wide outages) or send email to TMSSupport@Conduent.com. Every attempt will be made by TMS to resolve reported issue. Local technician will be assigned as will a Clientele Tracking Number. SFMTA must submit an SDR.</p>
<p>EPC 3 – LOW Priority</p> <p>The Issue is classified as a Low Priority Issue if not classified as Critical, High or Medium. (Most calls fit into this category)</p>	<p>Expected response: TMS will provide an e-mail response to SFMTA stating the status and action plan and will call SFMTA to get further information on the problem.</p> <p>SFMTA will send an email to TMSSUPPORT@Conduent.COM. SFMTA will attach the SDR to the email for review by TMS personnel. A Clientele Tracking number will be assigned for status purposes. Updates will be reviewed as part of the bi-weekly review process and will be included in the status spreadsheet.</p>

4. Required Issue Response Times

Contractor shall provide Issue responses in accordance with the following protocols:

EPC 1 Protocol - Within four hours of receipt of notice of an Issue from SFMTA, Contractor shall assign a remote product technical specialist(s) to diagnose and the Issue.

EPC 2 Protocol - Within one business day of receipt of notice of an Issue from SFMTA, Contractor assigns a remote product technical specialist(s) to diagnose the Issue.

EPC 3 Protocol - Within five business days of receipt of notice of an Issue from SFMTA, Contractor assigns a remote product technical specialist(s) to diagnose the Issue.

5. Required Issue Resolution Times

Issue resolution times shall be measured from the moment that SFMTA informs Contractor of an Issue.

EPC 1 Issue:

Contractor shall resolve or provide a workaround for a EPC 1 Issue within 24 hours of the Issue. If Contractor fails to resolve or provide a workaround a EPC 1 Issue within 24 hours of notice, the contractor shall commit to taking all necessary and reasonable steps to address Issue until it is resolved.

EPC 2 Issue:

Contractor shall provide a workaround as soon as feasible for EPC 2 Issue if they determine an immediate resolution is not available. Contractor shall commit to taking all necessary and reasonable steps to address Issue until it is resolved.

EPC 3 Issue:

Contractor shall commit to taking all necessary and reasonable steps to address Issue until it is resolved.

6. Work Order(s) for Additional Services.

The SFMTA may issue to Contractor Work Orders for Additional Services for work outside of Base Services that the SFMTA deems necessary to maintain, repair or improve the System or to provide additional training to SFMTA staff. The Work Orders for Additional Services shall be approved by the Director of Transportation or their designee and the Contractor's authorized representative. The total amount of all Work Orders for Additional Services shall not exceed \$100,000 per year. A Work Order for Additional Services shall describe the Additional Services that Contractor shall perform, the time period when Contractor shall perform those Additional Services, any applicable Milestones for completion of elements of the Additional Services, and the total compensation to be paid Contractor for those Additional Services, stated as a single lumpsum or with multiple lumpsum payments associated with the completion of Milestones described in the Work Order. The negotiated costs of Work Orders for Additional Services shall be based on the hourly personnel rates provided in Appendix B to this Agreement and a negotiated amount for profit and any other expenses not included in the hourly personnel rates.

7. System Availability Requirements

The Contractor's application and services infrastructure shall achieve 99.999% availability or no more than a total of eight hours minutes and 46 minutes seconds of downtime per year (measured using 24 hours per day, 365 days per year) due to an issue with a root cause in the Contractor's system.

8. Emergency On-Site Support

Contractor shall provide emergency on-site support at the hourly rates stated in Appendix B_ to address any emergency that has disabled or significantly impaired the System. SFMTA will

compensate Contractor's travel and living expenses in accordance with the GSA reimbursement rates. Contractor's responding personnel shall confirm arrival with the SFMTA project manager at a pre-determined location within 48 hours of SFMTA's request for emergency on-site support.

9. City's Responsibilities

The City shall perform the following tasks to maintain the System:

- a. Fixed-End: Basic application troubleshooting and maintenance of IT server and network infrastructure supporting Conduent applications.
- b. Vehicle: On-Site Equipment Troubleshooting and Repair down to line replaceable unit

10. Department Liaison. In performing the Services provided for in this Agreement, Contractor's liaison with SFMTA will be David Rojas, Technical Program Manager.

Appendix B

CALCULATION OF CHARGES

A. Base Services

	Q1	Q2	Q3	Q4	ANNUAL
YEAR 1	\$ 183,345	\$ 183,345	\$ 183,345	\$ 183,345	\$ 733,382
YEAR 2	\$ 188,846	\$ 188,846	\$ 188,846	\$ 188,846	\$ 755,383
YEAR 3	\$ 190,806	\$ 190,806	\$ 190,806	\$ 190,806	\$ 763,225
YEAR 4	\$ 196,530	\$ 196,530	\$ 196,530	\$ 196,530	\$ 786,121
YEAR 5	\$ 202,541	\$ 202,541	\$ 202,541	\$ 202,541	\$ 810,163

B. Additional Services

Rates are increased at three percent (3%) per year on each anniversary of the Effective Date of the Agreement. Travel costs shall be separately calculated at GSA rates and shown in the proposal.

Labor Classification	Hourly Rate	Labor Description
Mid-level Engineer	\$ 209.83	Software developers, Analysts, Field supervisors
Senior Engineer / SME	\$ 265.60	DBA, Communication & Systems Engineer, System Architect, other SMEs
Support (Jr. Engineer)	\$ 179.58	Deployment engineer, IT support, data/documentation & training, Technical writer, field/vehicle technician, QA engineers
Program Manager	\$ 249.45	Program manager

Appendix C

ROOT CAUSE ANALYSIS TEMPLATE

Root Cause Analysis/Corrective Action (RCCA) Template	
Issue Name:	Date:
Approved by:	Project:
Author and role:	Reviewer:
Methods Used:	
Event Description	
Timeline leading up to the Event	
Date	Sequence of Events
Findings	
Identification of Root Cause	
Corrective Action	

Appendix D

LIST OF MAINTAINED EQUIPMENT

1. On Board Vehicle equipment provided by Conduent
2. Any future hardware provided by Conduent
3. Fixed-end servers at TMC and CRS
4. Remote DIS servers
5. Storage Area Network at TMC and CRS
6. Ethernet Switches at TMC and CRS
7. KVM switches at TMC and CRS

Note: Items listed as 3-7 above will no longer be covered when SFMTA upgrades their computer infrastructure, as it will not be provided by Conduent, and will be the sole responsibility of SFMTA for support. The application, provided by Conduent will continue to be covered by this agreement.