

THIS PRINT COVERS CALENDAR ITEM NO.: 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Safety

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Blanket Purchase Agreement number 2021-01 under General Services Administration (GSA) Federal Supply Schedule Contract Number GS-35F-0623S with Lytx, Inc. for software and maintenance services for DriveCam event recorders for an amount not-to-exceed \$2,500,000 and term of five years.

SUMMARY:

- SFMTA has an existing blanket purchase agreement under a GSA contract with Lytx for software and maintenance services for DriveCam event recorders using 3G cameras that have been installed on MUNI rubber tire transit vehicles.
- The Federal Communications Commission (FCC) has mandated the transition from 3G to 4G (wireless technology) by the end of calendar year 2021, and internet providers will stop supporting 3G wireless communications effective June 30, 2021.
- Prior to June 30, 2021, Lytx has agreed to provide SFMTA with 856 new DriveCam 4G cameras, valued at \$466,520, at no cost to the SFMTA, and replace the existing cameras with new DriveCam 4G cameras at an estimated cost of \$100,000 (a \$130,000 savings).
- Since the current contract with Lytx expires on June 30, 2021 or at the end of the GSA Schedule contract period, whichever is later, the parties have agreed that it will terminate on June 30, 2021, and the new contract will take effect on July 1, 2021 until June 30, 2026 or until the end of the GSA Schedule contract period, whichever is later.
- The new contract includes the same software maintenance and technical support such as daily downloads of recorded events, filtering and factual reporting of driver behavior and performance as the existing contract.
- The new Lytx contract is based on the same General Service Administration's Federal Supply Service agreement and reflects competitively negotiated discounts for government clients.

ENCLOSURES:

1. SFMTA Board Resolution
2. Contract with Lytx, Inc.

APPROVALS:

DIRECTOR *[Signature]*
SECRETARY *[Signature]*

DATE

February 23, 2021

February 23, 2021

ASSIGNED SFMTAB CALENDAR DATE: March 2, 2021

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PURPOSE

Authorizing the Director of Transportation to execute Blanket Purchase Agreement number 2021-01 under General Services Administration (GSA) Federal Supply Schedule Contract Number GS-35F-0623S with Lytx, Inc. for software and maintenance services for DriveCam event recorders for an amount not-to-exceed \$2,500,000 and term of five years.

STRATEGIC PLAN GOAL

Blanket Purchase Agreement number 2021-01 under GSA Federal Supply Schedule Contract Number GS-35F-0623S with Lytx, Inc. will assist in the implementation of the following goals and objectives in the SFMTA Strategic Plan:

- Goal 1: Create a safer transportation experience for everyone
- Objective 1.1 Improve security for transportation system users.
 - Objective 1.3 Improve the safety of the transportation system.

BACKGROUND

In July 2009, the SFMTA entered into a one-year sole source contract with Lytx, Inc. (formally known as DriveCam) to install their DriveCam video event recorders on SFMTA rubber tire transit vehicles. The Lytx contract was based on the GSA's Federal Supply Service agreement and reflects competitively negotiated discounts for government clients. The purpose of this contract was to improve transit operator safety. At that time, Lytx was the only company that used a video event recorder to track and monitor transit operator behavior so that risks could be identified and corrected. Installation of the recorders was completed in August 2009. Lytx has continued to provide these services under contract with the SFMTA since that time.

Lytx's DriveCam video event recorder is mounted on the windshield behind the rear-view mirror and captures sights and sounds inside and outside SFMTA rubber tire transit vehicles. Exceptional forces (e.g. hard braking, swerving, collision, etc.) cause the recorder to create video and audio recordings of the critical time period before and after the triggered event. Saved events are downloaded, analyzed and used to improve driving behavior and assess liability in collisions. The storage, hosting of recorded events in a database server and analysis of recorded events is provided by Lytx. SFMTA then uses the recorded events and analysis to identify, assess and mitigate risks with the objective of reducing accidents and collisions.

While at least one other vendor recently developed the ability to provide a driver risk management system that generates video and audio recordings of actual incidents and provides feedback to correct unsafe behavior, the existing SFMTA rubber-tire transit vehicle fleet is equipped with the DriveCam video event recorders, wiring, and technology and Lytx is providing new video event recorders, including 856 new DriveCam 4G cameras, valued at \$466,520, at no cost to the SFMTA for this equipment to comply with the FCC's requirement that internet providers transition from 3G to 4G by end of calendar year 2021. In addition, Lytx will replace the existing cameras and install the new equipment at an estimated cost of \$100,000, which reflects a savings of \$130,000 for the SFMTA. Since internet providers will stop supporting 3G as of June 30, 2021, Lytx will install all

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new 4G compatible video event recorders by June 30, 2021. Since the DriveCam video event recording system is proprietary, Lytx is the only vendor that can provide maintenance and support for this system.

The current Lytx contract expires on June 30, 2021 or at the end of the GSA Schedule contract period, whichever is later. The replacement of the existing DriveCam cameras with new cameras with 4G capability will be performed under the existing Lytx contract at a cost not to exceed \$100,000. Since the current contract with Lytx expires on June 30, 2021 or at the end of the GSA Schedule contract period, whichever is later, the parties have agreed that it will terminate on June 30, 2021, and the new contract will take effect on July 1, 2021 until June 30, 2026 or until the end of the GSA Schedule contract period, whichever is later, and is based on the General Service Administration's Federal Supply Service agreement.

SFMTA staff is requesting that the SFMTA Board authorize the Director of Transportation to execute Blanket Purchase Agreement number 2021-01 under General Services Administration (GSA) Federal Supply Schedule Contract Number GS-35F-0623S with Lytx, Inc. for a not-to-exceed amount of \$2,500,000 and term of five years effective July 1, 2021.

STAKEHOLDER ENGAGEMENT

Transit bus maintenance management was consulted during the development of the contract and participated in several meetings to provide technical input on installation of the 857 new DriveCam cameras. Input included establishing requirements for an onsite pilot installation with subsequent development of specific detailed installation documentation for each of the five bus types in our fleet. Informational Technology was consulted and provided input on the DriveCam software application programming interface (API). There is no external stakeholder engagement required for this contract.

ALTERNATIVES CONSIDERED

One other vendor recently developed a system with similar capability to provide the SFMTA with the same kind of services. However, the DriveCam system is proprietary and SFMTA's rubber tire fleet is currently equipped with the DriveCam cameras, wiring, and technology, which Lytx will replace, at a not to exceed price of \$100,000 to the SFMTA, which reflects a savings of \$130,000 for the SFMTA, to comply with the Federal Communications Commission (FCC) requirement to internet providers that 3G be phased out by the end of 2021. Lytx is also the only vendor that can provide on-going maintenance and support for this system. Additionally, the contract with Lytx is based on a Federal Supply Schedule administered by the General Services Administration and reflects negotiated discount rates for government buyers. Therefore, it makes budgetary sense to remain with Lytx.

FUNDING IMPACT

Operating funds totaling \$500,000 per year are budgeted in System Safety's FY22 and FY23 budget for the Lytx software and maintenance services contract. SFMTA staff intends to submit a funding request for this contract in the SFMTA's FY24 and FY25 operating budgets. Operating funds totaling

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\$100,000 are budgeted in System Safety's FY21 budget for Lytx installation services.

ENVIRONMENTAL REVIEW

On December 22, 2021, the SFMTA, under authority delegated by the San Francisco Planning Department, determined that the execution of Blanket Purchase Agreement number 2021-01 and SFMTA Contract No. 2021-33 is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and/or 15378(b).

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

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed this calendar item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute Blanket Purchase Agreement number 2021-01 under General Services Administration (GSA) Federal Supply Schedule Contract Number GS-35F-0623S with Lytx, Inc. for software and maintenance services for DriveCam event recorders, for an amount not-to-exceed \$2,500,000 and term of five years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) staff request approval for the Director of Transportation to execute Blanket Purchase Agreement number 2021-01 under General Services Administration (GSA) Federal Supply Schedule Contract Number GS-35F-0623S with Lytx, Inc. for a not-to-exceed amount of \$2,500,000 and term of five years for software and maintenance services for DriveCam event recorders; and,

WHEREAS, The Federal Communications Commission (FCC) has mandated the transition from 3G to 4G (wireless technology) by the end of calendar year 2021, and internet providers will stop supporting 3G wireless communications effective June 30, 2021; and,

WHEREAS, Prior to June 30, 2021, Lytx will provide new video event recorders, including 856 new DriveCam 4G cameras, valued at \$466,520, at no cost to the SFMTA for this equipment, and will replace the existing cameras and install the new equipment at an estimated cost of \$100,000, which reflects a savings of \$130,000 for the SFMTA; and,

WHEREAS, The proprietary DriveCam video event recorder is mounted on the windshield behind the rear-view mirror to capture sights and sounds inside and outside SFMTA rubber tire transit vehicles and exceptional forces, such as hard braking, swerving, collisions, cause the recorder to create the video and audio recordings which Lytx stores in a database server and performs analysis of recorded events for SFMTA to use to identify, assess and mitigate risk in order to reduce accidents and collisions; and,

WHEREAS, The new contract with Lytx includes the same software maintenance and technical support such as daily downloads of recorded events, filtering and factual reporting of driver behavior and performance as the existing contract with Lytx; and,

WHEREAS, On December 22, 2021, SFMTA staff, under authority delegated by the San Francisco Planning Department, determined that execution of Blanket Purchase Agreement number 2021-01 and SFMTA Contract No. 2021-33 is not a “project” under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and/or 15378(b); and,

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

WHEREAS, Operating funds totaling \$500,000 per year are budgeted in Safety Division’s FY22 and FY23 budget for the Lytx software and maintenance services contract and SFMTA staff intends to submit a funding request for this contract in the SFMTA’s FY24 and FY25 budgets, and \$100,000 is budgeted in Safety Division’s FY21 operating budget for the Lytx installation services; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Blanket Purchase Agreement number 2021-01 under General Services Administration (GSA) Federal Supply Schedule Contract Number GS-35F-0623S with Lytx, Inc. for software and maintenance services for DriveCam event recorders, for an amount not-to-exceed \$2,500,000 and 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 March 2, 2021.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency



BEST VALUE
BLANKET PURCHASE
AGREEMENT FEDERAL
SUPPLY SCHEDULE

San Francisco Municipal Transportation Agency (SFMTA)

In the spirit of the Federal Acquisition Streamlining Act, SFMTA and Lytx, Inc. enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Services Administration (GSA) Federal Supply Schedule Contract Number GS-35F-0623S.

Federal Supply Schedule contract BPAs eliminate contracting and open market costs such as: search for sources; the development of technical documents, solicitations and the evaluation of offers. Teaming Arrangements are permitted with Federal Supply Schedule Contractors in accordance with Federal Acquisition Regulation (FAR) 9.6.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result *is* to create a purchasing mechanism for the ordering activity that works better and costs less.

Signatures:

CITY
San Francisco Municipal Transportation Agency

By: _____
Jeffery P. Tumlin
Director of Transportation

Date

Approved as to Form:

Dennis J. Herrera
City Attorney

CONTRACTOR
Lytx, Inc.

By: _____
Shelley Bennett
Senior Vice President/General Counsel

Date

By: _____

John I. Kennedy
Deputy City Attorney

AUTHORIZED BY:

MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS

Resolution No: _____

Adopted: _____

Attest:

Secretary, SFMTA Board of Directors



BPA NUMBER 2021-01
(SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY)
BLANKET PURCHASE AGREEMENT

Pursuant to GSA Federal Supply Schedule Contract Number(s) GS-35F-0623S, Blanket Purchase Agreements, the Contractor agrees to the following terms of a Blanket Purchase Agreement (BPA) EXCLUSIVELY WITH San Francisco Municipal Transportation Agency (SFMTA):

(1) The following contract items can be ordered under this BPA. All orders placed against this BPA are subject to the terms and conditions of the contract and the SFMTA Statement of Work and Software License and Maintenance Services Agreement which are incorporated into this BPA by reference:

MODEL NUMBER/PART NUMBER	*SPECIAL BPA DISCOUNT/PRICE
ALL ON ADDENDUM A TO SFMTA STATEMENT OF WORK (SOW)	PRICES AS SPECIFIED IN ADDENDUM A TO SOW

(2) Delivery:

DESTINATION	DELIVERY SCHEDULES/DATES
As required by delivery order	As required by delivery order

(3) The San Francisco Municipal Agency estimates, but does not guarantee, that the volume of purchases through this agreement will be 900.

(4) This BPA does not obligate any funds.

(5) This BPA goes into effect on 7/1/2021 and expires on 06/30/2026 or at the end of the GSA Schedule contract period, whichever is later.

(6) The existing BPA Number 2016-01 shall terminate on 6/30/2021.

(7) The following office(s) is hereby authorized to place orders under this BPA:

OFFICE	POINT OF CONTACT
Safety Division	Robin Courtney

(8) Orders will be placed against this BPA via Electronic Data Interchange (EDI), FAX, or paper.

(9) Unless otherwise agreed to, all deliveries under this BPA must be accompanied by delivery tickets or sales slips that must contain the following information as a minimum:

- (a) Name of Contractor
- (b) Contract Number
- (c) BPA Number
- (d) Model Number or National Stock Number (NSN)
- (e) Purchase Order Number
- (f) Date of Purchase
- (g) Quantity, Unit Price, and Extension of Each Item (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show the information); and
- (h) Date of Shipment

- (10) The requirements of a proper invoice are specified in the Federal Supply Schedule contract. Invoices will be submitted to the address specified within the purchase order transmission issued against this BPA.
- (11) The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of this BPA and the Contractor's invoice, the provisions of this BPA will take precedence.

The following terms and conditions are incorporated into Blanket Purchase Agreement ("Blanket Purchase Agreement" or "BPA") Number 2021-01 between the City and County of San Francisco, through its San Francisco Municipal Transportation Agency ("SFMTA" or "City"), and Lytx, Inc. ("Lytx" or "Contractor") under GSA Federal Supply Schedule Contract GS-35F-0623S (the "GSA Schedule") including the GSA Price Schedule ("GSA Price Schedule") unless otherwise noted.

The following describes all possible equipment and services for which the SFMTA may issue a purchase order from July 1, 2021 until June 30, 2026, but shall not obligate the SFMTA, in any manner, to procure any or all of the equipment or services specified. By executing the Blanket Purchase Agreement, Contractor agrees to provide the equipment and services as specified in any purchase order issued in compliance with the GSA Schedule and the Blanket Purchase Agreement.

PART 1 – GENERAL

1.01 DESCRIPTION

- A. The equipment and services specified in this section shall consist of furnishing certain Lytx parts, accessories and services:
1. Managed Services Renewal services ("Managed Services Renewal") including software maintenance and technical support in accordance with the Software License and Maintenance Services Agreement. The services shall

include program management, software maintenance and technical support, daily downloads (to the extent applicable vehicles are used daily) of recorded events from all SFMTA vehicles in which an Event Recorder is installed and operational, filtering of these events, factual reporting of driving behavior, performance and results reporting, and hosting and system maintenance. The SFMTA may purchase the following maximum of Managed Services Renewals based on the existing and estimated increases in the fleet:

July 1, 2021 – June 30, 2022	900
July 1, 2022 – June 30, 2023	900
July 1, 2023 – June 30, 2024	900
July 1, 2024 – June 30, 2025	900
July 1, 2025 – June 30, 2026	900

The price for these services are set forth in the GSA Price Schedule and Addendum A (the SFMTA Pricing Schedule) of this Statement of Work ("Addendum A").

2. Training and subject matter witness support as provided herein. The price for these services are set forth in the GSA Price Schedule and Addendum A.
 3. Other items as provided herein. The price for these services are set forth in the GSA Price Schedule and Addendum A.
- B. The SFMTA may issue multiple purchase orders against the BPA for the purchase of a specific quantity of Managed Service Renewals and related services and parts.

1.02 QUALITY ASSURANCE/QUALITY CONTROL

- A. The Contractor shall use only skilled workers who are thoroughly trained and experienced in the necessary crafts methods for proper performance of the work required under these Specifications.
- B. All software shall be the most current, stable version available for the proposed equipment.
- C. The Contractor shall establish, maintain and enforce a Quality Assurance Program. The Quality Assurance Program shall demonstrate that all activities affecting quality are correctly performed by competent people and is subject to SFMTA review upon reasonable request. These requirements shall apply to all BPA activities.

1.03 TRAINING

- A. SFMTA shall have the option to purchase training services related to replacement of DriveCam equipment on SFMTA rubber tire revenue vehicles, Managed Services (event scoring and Lytx account), login and access, and on-site training classes for designated staff on Lytx account usage, event review and driver coaching.
- B. All Contractor employees who will be working on this project shall undergo SFMTA conducted safety training as requested by SFMTA. Time spent by Contractor's employees in any SFMTA training will be billed to SFMTA at Contractor's then current hourly rates as indicated in purchase order.

PART 2 – PRODUCTS

Part numbers identified herein are subject to change from time to time. A list of updated part numbers will be provided to SFMTA upon request.

2.01 Hardware

- A. The Contractor shall provide the following hardware under the GSA Price Schedule, and will also make available any peripherals and parts as needed as Open Market Items under the GSA Price Schedule:
1. Event Recorder, SF300, LTE, NA – part number ER-SF300-0027

2.02 Software Subscription Services

- A. The Contractor shall provide the following software subscription services including any updates or patches:

1. 60-month renewal of Tier 2 – Managed Service, including DriveCam Online license –GSA item number GSA – Tier2-MSA
2. 60-month subscription to LVS Premium – Open Market Item part number Contractor Video Services Premium – Bill Monthly
3. 60-month subscription to ActiveVision – Open Market Item part number ACTIVEVISION

- B. The following terms shall apply to the Services:

1. Description of Managed Services. Contractor shall provide SFMTA remote access to Contractor's data center via in-bound internet connectivity, providing access to the information, data and content captured by the DriveCam video event recorders ("VERs") in SFMTA's possession or otherwise provided by SFMTA to Contractor in connection with Contractor's provision of the Services (the "Data") and the hosted Software applications licensed hereunder in order to view and download driving videos captured by SFMTA's VERs, and any related reports and assessments provided by Contractor, to the extent purchased hereunder. Contractor shall provide remote program management services whereby Contractor shall: (i) monitor the cellular connectivity to the VERs; and (ii) monitor SFMTA's Managed Services' key performance indicators.

Managed Services are available for use with auxiliary cameras and APIs to the extent supported by Contractor. Certain functionality is dependent on VER model used by SFMTA. Contractor retains the right, in its sole discretion, to update the Product firmware and functionality and adjust the Product settings, including, but not limited to, video clip length, video compression, sensitivity of Product accelerometers and sensors, file upload and download size limits, and length of session periods, as determined by Contractor to be necessary to provide the Managed Services hereunder and to comply with applicable laws.

2. Description of Lytx Video Services Premium. Lytx Video Services Premium allows SFMTA to browse, upload and live stream video stored on the VER. Only vehicles for which a Lytx Video Services Premium subscription is purchased are permitted to have access to Lytx Video Services Premium functionality. Each subscription includes a total of five (5) minutes of browse, livestream and/or video upload time per month, per subscribed vehicle. Contractor retains the right, in its sole discretion, to update and adjust Service

settings such as maximum upload and download size limits and length of session periods.

3. Usage Calculations. Video browse time is measured by time spent browsing video on SFMTA VER. Video upload time is measured by length of minutes of video uploaded to Contractor data center from SFMTA VER. Live stream time is measured by time spent live streaming video from SFMTA VER. The number of minutes of video browsed, live-streamed, or uploaded will be calculated based on the number of views recorded (e.g. if a minute of video is uploaded from each of 4 camera views, that is considered 4 minutes for purposes of SFMTA's minutes usage calculation hereunder). Total minutes are pooled and usage is determined by Contractor. Any unused minutes are forfeited at the end of each month. If the minutes cap is reached in a given month, Contractor has the right to suspend video access service for the remainder of the month unless or until SFMTA purchases additional minutes.
4. Remote Access to Results. Subject to SFMTA's compliance with the terms and conditions of the Agreement and this Addendum, SFMTA shall have remote inbound internet access to the Data which are hosted on computer hardware servers controlled by Contractor. To access such Data remotely, SFMTA will be assigned user accounts and related user identification credentials (collectively, "User IDs") and passwords. SFMTA shall be responsible for determining and designating which employees of SFMTA (each, an "End User") receive permissions to remotely access such Data; provided, that, by using the Services, SFMTA and such End User agree to the terms of use posted on the website used to access the Services (currently, <https://login.lytx.com>). SFMTA may have only as many End Users as the number of User IDs activated at any one time. SFMTA understands that sharing of User IDs and passwords can jeopardize the security of SFMTA Data. SFMTA acknowledges that Contractor may track the number of active User IDs and to disallow use by more than the authorized number of User IDs.
5. SFMTA Configurations. SFMTA assumes all responsibility for choosing and maintaining the SFMTA configurations utilized by SFMTA in connection with the Products and Managed Services, including, without limitation, permission hierarchies and any SFMTA-managed settings, and Contractor expressly disclaims any and all liability for any damages resulting therefrom.

2.04 Standards for Wires and Cables

- A. All wire sizes and insulation shall be based on the current carrying capability, voltage drop, mechanical strength, temperature and flexibility requirements, as well as fire resistance requirements for vehicle applications in accordance with Contractor specifications

2.04 SFMTA Pricing Schedule

- A. The price of services are provided in the GSA Price Schedule and Addendum A.

2.05 Additional Services and Costs

- A. Additional costs for equipment, software, services, maintenance, and other work not specified in the GSA Schedule shall be provided in Addendum A.

PART 3 – EXECUTION

3.01 CONTRACTOR'S MANAGED SERVICES

- A. The video footage recorded by the DriveCam system of events in SFMTA's DriveCam-equipped vehicles shall be stored and accessible to SFMTA on the Contractor's website for ninety (90) days after an event has been uploaded to SFMTA's Contractor account.
- B. When triggered, the video footage recorded by the DriveCam system of events in SFMTA's DriveCam shall be 12 seconds, including 8 seconds of recording prior to the "trigger" and 4 seconds after the "trigger."
- C. Designated SFMTA staff shall be provided access by logging into the website and shall be able to view these video footages using Internet Explorer 11 and newer, and the latest versions of Google Chrome, Mozilla Firefox, and Safari.
- D. In accordance with the terms of Contractor's standard video clip retention policy, which may be updated by Contractor from time to time, after 90 days, the Contractor shall archive the video footage for a period of 275 days and then delete it. After the initial ninety (90) day period, Contractor will charge SFMTA its standard fee on a per event basis to retrieve any video event file from storage as set forth in Addendum A.
- E. The SFMTA shall have the capability to download every video footage from the website and store onto an electronic media during the initial 90-day period.
- F. The Contractor shall utilize Contractor's standard Scoring System.

3.02 DISASTER RECOVERY

- A. The Contract shall implement the following for data recovery, redundancy and uptime:
 1. 99% up time as measured over a sixty (60)-day rolling window (other than downtime due to Unforeseen Events or regularly scheduled downtime)
 2. 24/7 monitoring year-round hosted and system administration of the Application using automated tools that verify connectivity, service availability, and database access.
 3. Current, industry-standard bandwidth to meet the Application hosting needs
 4. Redundant servers, network equipment and communications equipment used to deliver the Application
 5. Redundant connections from multiple Internet access providers used to deliver the Application

6. Redundant, scalable, and highly available data storage on raided storage systems
7. Redundant power and air conditioning, UPS power to operate all production systems, and support by a diesel generator in the event of utility supply shortage or interruption
8. Application and server capacity planning
9. Notice to customer of problems affecting system availability related to the environment and/or application

3.03 WARRANTY

- A. The warranty provisions of GSA Schedule GS-35F-0623S shall apply. In addition, for a period of two (2) years after the date of shipment (the "Warranty Period") with respect to video event recorders ("VERs"), Contractor warrants to SFMTA that the VERs, as delivered by Contractor to SFMTA, will substantially conform to Contractor's documentation. The foregoing warranty shall not apply if SFMTA fails to notify Contractor in writing of such defects prior to the expiration of the Warranty Period, if the defect is not reproducible, or the defect is caused by: (a) SFMTA's or its representative's negligence, misuse, neglect or intentional acts or omissions; (b) any accident, alteration, repair or improper testing in any respect by a party other than Contractor or its representatives; (c) any other events beyond Contractor's reasonable control; (d) to the extent performed by SFMTA or its representatives, the failure to install, maintain or use the VER in accordance with the Documentation and Contractor's instructions; (e) except as authorized by Contractor in writing, any attempt to service the VER other than by Contractor or its representatives; or (f) third party software, hardware, or materials not approved or supplied by Contractor. Contractor shall not be responsible for any of SFMTA's or a third party's software, information or data contained in, stored on, or integrated with any VER returned to Contractor pursuant to the foregoing warranty. Contractor's and its licensors', suppliers', subcontractors' and distributors' sole liability, and SFMTA's exclusive remedy, under this Section shall be, at Contractor's option: (i) to use commercially reasonable efforts to correct any reproducible defects identified by SFMTA in writing during the Warranty Period which renders the VER non-conforming, (ii) to replace the defective VER (with either a new or refurbished product), or (iii) to accept return of the defective VER from SFMTA and provide SFMTA with a pro rate refund based on the remaining portion of the Warranty Period. Replacement VERs will assume the greater of the balance of the original Warranty Period or ninety (90) days. With respect to any hardware parts or software provided hereunder other than the VERs, SFMTA acknowledges and agrees that its use and possession of such product shall be governed by the terms of such product manufacturer's warranty, if any, and SFMTA may look to the third party manufacturer with respect to all applicable claims, and Contractor (to the extent it has the right) hereby grants SFMTA a right to share in and enforce warranties made by any such manufacturer. Contractor has no obligation to provide maintenance and support for out-of-warranty VERs.
- B. Warranty Claims. To make a return under the warranties in this Section, SFMTA must first contact Contractor Technical Support and assist in a reasonable troubleshooting effort to restore the VER to service. Upon a failure determination

by Contractor Technical Support, provided SFMTA requests a Return Material Authorization number (RMA) within the Warranty Period, Contractor will provide SFMTA an RMA number and a prepaid return label. For all warranty returns, SFMTA must use the return label provided by Contractor to send the VER to Contractor, packaged appropriately for safe shipment. Contractor shall pay all freight charges for shipment to SFMTA of any replacement VER covered by these warranty provisions. Prior to making any warranty return, SFMTA shall be responsible for downloading any Data from the Product that SFMTA desires to retain. Contractor's practice is to delete the Data on the Product in connection with receipt of a warranty return, and Contractor disclaims all liability relating to SFMTA's loss of data in connection therewith.

PART 4 – CITY OWNERSHIP OF EQUIPMENT, DATA, DATABASE AND WORK PRODUCT

4.01 OWNERSHIP OF DATABASE AND WORK PRODUCT

Title to the products purchased by SFMTA hereunder (excluding title to the software) will pass to SFMTA upon Contractor's delivery to the SFMTA. The software and data license and ownership provisions of the License Agreement shall apply to the BPA.

4.02 MAINTENANCE OF CONTRACTOR'S ONLINE DATABASE

The Contractor shall maintain the Lytx account database and provide access to the SFMTA data as described in Section 3.01 above.

PART 5 – SUBJECT MATTER WITNESS

The Contractor shall provide a knowledgeable employee to provide deposition and court testimony regarding DriveCam equipment, technology, policies and procedures, training, and services provided to the City as reasonably required by the City. Such as-needed services shall be provided as set forth in Addendum A, SFMTA Pricing Schedule, of this Statement of Work.

PART 6 – CUSTOMIZED REPORTS

The Contractor shall provide reports covering the following areas as requested by the SFMTA: (1) Program Performance Tools are reports that show trends and comparisons by group, vehicle, and drivers, (2) Coaches Tools are reports that show how the fleet, vehicle and drivers are performing, and (3) and Monitoring Tools are operational reports that show overdue statistics by group, vehicle, and driver.

PART 7 – INSTALLATION

With respect to any installation services purchased by SFMTA from Contractor, Contractor shall use commercially reasonable efforts to install the Products. SFMTA shall provide Contractor a safe, designated installation area protected from environmental hazards located in each of the bus parking lots. SFMTA shall provide Contractor with reasonable cooperation, including, without limitation, accurate information about vehicle types, and access to all necessary SFMTA personnel, facilities, and equipment (including the Products) for the purpose of performing its obligations hereunder. Any Contractor installation services provided hereunder shall be subject to a mutually

agreed installation schedule. SFMTA shall be responsible for ensuring availability of vehicles and Hardware (subject to supply by Contractor) and access to installation site on agreed installation date and shall comply with all reasonable instructions related to the installation.

SFMTA will provide as many vehicles as possible per the requested schedule. SFMTA will strive to provide at least seven (7) days prior written notice to Contractor if the implementation schedule is delayed, extended, or rescheduled. SFMTA shall be responsible for approving the installation placement and technique on the initial Hardware for each major vehicle type (First Article Installation) including compliance with applicable laws. Such approval shall constitute authorization for Contractor to proceed with installation of remaining Hardware using the SFMTA-approved placement and technique in line with the installation procedures and documentation once these are finalized and approved. If installation services are not purchased by SFMTA hereunder, SFMTA assumes any and all liability resulting from such installation of Products, including, without limitation, liability resulting from failure to use a properly trained technician or failure to use proper installation tools. Contractor expressly disclaims any and all responsibility for any damages arising out of improper installation and maintenance of any Hardware not installed by, or on behalf of, Contractor. SFMTA shall defend, indemnify and hold Contractor and its officers, directors, agents, subcontractors and employees harmless from all damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) resulting from installation or maintenance of the Products by a party other than Contractor or its representatives.

PART 8 – INSURANCE REQUIREMENTS

- A. 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:
 1. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
 2. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
 3. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
 4. Shipping Insurance with limits not less than the price charged by Contractor to the SFMTA for all Equipment Contractor shall provide to the SFMTA under this Agreement; said insurance coverage to be effective at any time the Equipment or any part of the Equipment is not in the possession of the Contractor or of the SFMTA. Contractor shall fully indemnify the City for any applicable deductible for any claim under said Shipping Insurance.
- B. Commercial General Liability, Commercial Automobile Liability Insurance, and Shipping Insurance and Inventory Insurance policies must provide the following:
 1. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
 2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this

- Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- C. Each policy on which SFMTA is an additional insured shall be endorsed to provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:
Robin Courtney
SFMTA Safety Division
1 South Van Ness Avenue, 6th Floor
San Francisco, CA 94103
 - D. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the Term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract Term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
 - E. 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.
 - F. 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.
 - G. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.
 - H. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.
 - I. Contractor will accept liability for all subcontractors work in performance of this contract and any sub-contractor work product, negligence, gross, or willful misconduct shall not be excluded from Contractor's insurance coverage as required under this agreement. Notwithstanding the foregoing, in no event shall Contractor's insurance coverage for actions by its subcontractors be required to exceed the coverage that would be afforded to actions by Contractor under such policies.

PART 9 – INDEMNIFICATION; INCIDENTAL AND CONSEQUENTIAL DAMAGES; LIMITATIONS OF LIABILITY

Subject to the limitations set forth below, Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to Contractor's property, resulting directly from

Contractor's negligence or willful misconduct in performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except to the extent such loss, damage, injury, liability or claim is the result of negligence or willful misconduct of City. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts.

Notwithstanding the foregoing, (i) the City acknowledges and agrees that Contractor makes no guarantee that driving will be risk-free as a result of the use of Contractor's products and services, (ii) in no event shall Contractor be required to indemnify City for damages caused by City employees, and (iii) Contractor shall not have any obligation to indemnify City against wrongful discharge or similar employment claims by City's employees except to the extent a wrongful discharge is due to Contractor tampering with video events or otherwise providing City with a video event containing a material inaccuracy due to Contractor's actions.

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.

Subject to the limitations set forth below, Contractor shall be responsible for incidental and consequential damages resulting from its indemnification obligations above. Nothing in this Agreement shall constitute a waiver of limitation of any rights that SFMTA may have under applicable law.

IN NO EVENT SHALL CONTRACTOR OR ITS LICENSORS, SUPPLIERS, OR DISTRIBUTORS (COMBINED) BE LIABLE UNDER THIS AGREEMENT, THE BLANKET PURCHASE AGREEMENT, THE GSA CONTRACT OR ANY OTHER AGREEMENT INCORPORATED INTO SUCH AGREEMENTS BE REFERENCE, FOR ANY AMOUNTS EXCEEDING THE LESSER OF (i) THOSE ACTUALLY PAID BY SFMTA TO CONTRACTOR UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION ACCRUES OR (ii) ONE MILLION DOLLARS (\$1,000,000).

PART 10 - PROPRIETARY OR CONFIDENTIAL INFORMATION

Contractor understands and agrees that, in the performance of the work or services, all information provided from the SFMTA shall be treated as confidential and not disclosed to any other third party. Further, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of 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 data.

Contractor agrees to provide access to any and all video recordings and database information to only those SFMTA employees who have been designated by the SFMTA to receive such information. Contractor shall not provide access to any SFMTA employee who has not been designated to receive this information.

PART 11 – PAYMENT

The SFMTA shall pay for the cost of the services, equipment and hardware ordered hereunder

within 30 days after the date indicated on Contractor's invoice(s).

The Contractor shall invoice the SFMTA on a monthly basis for Managed Services including program management, training and implementation, daily downloads of recorded events from all SFMTA vehicles, filtering of these events, factual reporting of driving behavior, performance and results reporting, and hosting and system maintenance after the services have been performed.

Payment for Managed Services shall be due upon completion of such services.

The Contractor shall invoice the SFMTA for training classes after the classes have been performed as specified in GSA Schedule GS-35F-0623S.

PART 12 -- FORCE MAJEURE

Neither SFMTA nor the Contractor shall be liable under this BPA because of any failure or delay in the performance of its obligations on account of strikes, shortages, riots, fire, flood, storm, earthquake, acts of God, hostilities, or any other cause beyond its reasonable control ("Unforeseen Events").

END OF SECTION

CITY

San Francisco Municipal Transportation Agency

Jeffery P. Tumlin
Director of Transportation

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____

John I. Kennedy
Deputy City Attorney

AUTHORIZED BY:

MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS

Resolution No: _____

Adopted: _____

Attest: _____

Secretary, SFMTA Board of Directors

CONTRACTOR

Lytx, Inc.

By Signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

Shelley Bennett

Senior Vice President
& General Counsel
9785 Towne Center Drive
San Diego, CA 92121
Supplier Number: 0000016014

BPA 2021-01
ADDENDUM A

SFMTA Pricing Schedule July 1, 2021 – June 30, 2026	QTY	MONTHLY UNIT COST	MONTHLY EXTENDED COST
I. MANAGED SERVICES Including DriveCam Online License GSA–Tier2-MS-M; Medium Duty	900	\$29.41	\$26,469
II. LYTX VIDEO SERVICES PREMIUM Part No. LYTXVDSRVCSPRM-CM-BM-USD Open Market Item 200 hours of continuous DVR recording and interior machine vision and artificial intelligence triggers, such as Handheld Cell, Driver Unbelted, Inattentive Driving, Smoking, Food/Drink, and Event Recorder Obstruction	900	\$5.25	\$4,725
III. ACTIVE VISION Part No. ACTVIS-CM-BM-USD Open Market Item Exterior machine vision and artificial intelligence triggers, such as Lane Departure, Following Distance, Critical Distance	900	\$5.26	\$4,734
IV. ROLLING STOP TRIGGER Part No. RLLNGSTP-CM-BM-USD Open Market Item	900	\$0.00	\$0
V. REAL TIME UPLOAD	900	\$0.00	\$0

Part No. RTE-CM-BM-USD Open Market Item			
VI. ARCHIVED VIDEO RETRIEVAL	Per Request	\$150.00	N/A
VII. SUBJECT EXPERT WITNESS	Per Request	\$1,000	N/A
TOTAL MONTHLY			\$35,928
TOTAL ANNUAL			\$431,136
CAMERA INSTALLATION			
VIII. STANDARD INSTALLATION	Per Request	\$180 per install	\$25,920
IX. COMPLEX INSTALLATION OF EXTENDED HARNESS	Per Request	\$60 per install	\$8,640
TOTAL INSTALLATION			\$34,560
CAMERA PURCHASE			
X. VIDEO EVENT RECORDER Event Recorder, SF300, LTE, NA – Part Number ER-SF300-0027	856	\$545 per device	Waived
TOTAL CAMERA PURCHASE			\$0.00

BPA 2021-01
ADDENDUM B

Ongoing Data Transfer to SFMTA

Background

This document outlines the method by which the data will be extracted by Lytx and made available to SFMTA on an on-going basis during the period Managed Services are provided to SFMTA.

Data Transfer

Lytx will make available to SFMTA an application programming interface (API) for video archiving. The Events API and Video API instructions are available in the Lytx Support Center and Lytx Dev Portal, respectively.

Under Lytx's standard video clip retention policy (which may be updated by Lytx at any time), video uploaded to the Lytx data center shall be available online for ninety (90) days and then stored on back-up media and no longer available online. SFMTA shall only have the ability to utilize the Events API and Video API to download video during this initial 90-day period. Lytx will charge its standard fee on a per-event basis to retrieve any video file from back-up storage. Backups will be stored for the remaining portion of one (1) year (approximately 275 days). At that time, the stored video will be deleted.

ATTACHMENT A

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

**SOFTWARE LICENSE AND MAINTENANCE SERVICES AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND
LYTX, INC.**

SFMTA 2021-33
(Lytx)

This Software License Agreement (the “Agreement”) is made this first day of July, 2021, in the City and County of San Francisco, State of California, by and between: Lytx, Inc., 9785 Towne Center Drive, San Diego, CA, 92121, hereinafter referred to as “Contractor,” and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through its San Francisco Municipal Transportation Agency, hereinafter referred to as “City”, “SFMTA”, or MUNI.

Recitals

WHEREAS, the City wishes to license certain software from Contractor; and,

WHEREAS, Contractor represents and warrants that it is qualified to provide such software and services required by City as set forth under this Agreement.

Now, THEREFORE, the parties agree as follows:

- 1. Definitions.** Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Acceptance	Notice from the City to Contractor that the Licensed Software meets the specifications contained in the Documentation. City's Acceptance of the Licensed Software shall be governed by the procedures set forth in Section 7.
Agreement	This document and any attached appendices and exhibits, including any future written and executed amendments.
Authorization; Authorization document	This Software License Agreement, properly executed by San Francisco Municipal Transportation Agency, and certified by the Controller for the specific funding of this Agreement or any modification thereof.

Documentation	The technical publications relating to the use of the Licensed Software, such as reference, installation, administrative and programmer manuals, provided by Contractor to City.
Hardware	Contractor's video event recorders and associated hardware provided to City hereunder.
Licensed Software	Any software (in machine executable object code format only, if applicable) provided to the City hereunder, including, without limitation, the operating software embedded in the Hardware, installation tool software, event player software, access to the web-based client portal to access the City's Lytx account and any other software made available by Contractor on a website hosted by or on behalf of Contractor for use by the City.
Managed Services	The analysis and reporting of driving events captured by Contractor's video event recorders installed in the City's vehicles and certain other services to be provided by Contractor hereunder relating to City's access and use of the Licensed Software.
Object code	Machine readable compiled form of Licensed Software provided by Contractor.
Specifications	The functional and operational characteristics of the Licensed Software as described in Contractor's current published product descriptions and technical manuals

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the City. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the City, unless otherwise indicated by the context.

2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, 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 of this Agreement.

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

3. Term of the Software License Agreement. Subject to Section 5, the license granted under this Agreement shall coincide with the subscription term for the Managed Services provided to the City under the GSA Federal Supply Schedule Contract GS-35F-0623S (the “GSA Contract”) unless sooner terminated in accordance with the provisions of this Agreement. Licenses are purchased and apply on a per video event recorder (VER) basis for the applicable subscription term.

4. Effective Date of the Agreement. This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

5. License

a. Grant of License. Subject to the terms and conditions of this Agreement, Contractor grants City a non-exclusive and non-transferable **limited term** license to use the Licensed Software and Managed Services for City’s internal fleet management purposes only to achieve the results described in the Statement of Work between the SFMTA and Contractor and the GSA Federal Supply Schedule Contract GS-35F-0623S, without the right to sublicense such rights, provided City unconditionally agrees to access and use the Licensed Software and Managed Services strictly in accordance with the Documentation and this Agreement (“License”). Under the License, City may print out, or otherwise make, printed copies (“Copies”) of the reports, numeric results and other information and materials generated from City’s access and use the Licensed Software and Managed Services for internal fleet management purposes only. Any updates, modifications, enhancements or new versions of the Licensed Software or Managed Services provided or made available to City by Contractor, in accordance with this Agreement, shall be considered Licensed Software and Managed Services subject to this Agreement. Contractor shall be entitled at any time and without liability to improve, modify, suspend, test, maintain, or repair the systems used by Contractor to provide the Managed Services in whole or in part and/or any other services rendered under this Agreement even if this requires temporarily suspending the operation of the Managed Services, provided that the Contractor shall use reasonable efforts to minimize all forms of disruption resulting therefrom. City acknowledges and agrees that the Licensed Software is the proprietary information of Contractor and that this Software License grants City no title or right of ownership in the Licensed Software.

b. Restrictions on Use. City is authorized to use the Licensed Software only for City’s internal purposes and only on the Designated CPU or the Designated Site specified in the Authorization Document. City agrees that it will, through its best efforts, not use or permit the Licensed Software to be used in any manner, whether directly or indirectly, that would enable any other unauthorized person or entity to use the Licensed Software. Except as otherwise expressly provided in this Agreement, City agrees to: (a) only use the Licensed Software and Managed Services in the manner, and for the purpose, expressly specified in this Agreement; (b) not decompile, disassemble analyze or otherwise examine the Licensed Software and/or Managed Services for the purpose of reverse engineering, or facilitate or permit a third party to do so (except to the extent this restriction is expressly prohibited by applicable law); (c) not delete or in any manner alter any notice, disclaimers or other legends contained in the Licensed Software and Managed Services or appearing on any screens, documents, reports, numeric

results or other materials obtained by City through use of the Licensed Software and Managed Services (“Notices”); (d) reproduce and display all Notices on Copies City makes, in accordance with this Agreement; (e) not attempt to access any systems, programs or data of Contractor that are not licensed under this Agreement; (f) not copy, reproduce, republish, upload, post, transmit or distribute the Licensed Software or Managed Services, or any portion thereof, or facilitate or permit a third party to do so; and (g) not use any device or software to interfere or attempt to interfere with the property operation of the Licensed Software and Managed Services. Contractor may immediately terminate this Agreement in the event that City breaches the provisions of this Section 5.B.

6. Delivery

a. **Delivery.** Certain of the Licensed Software is embedded in the video event recorders to be delivered hereunder. In addition, the Licensed Software includes a web-based client portal (SaaS service) where SFMTA can access the City’s Lytx account.

b. **Installation.** Contractor shall complete the installation of new cameras by June 30, 2021 under the existing Lytx contract. Lytx shall provide SFMTA with 856 new DriveCam 4G cameras to replace the existing DriveCam 3G cameras (and bring SFMTA’s total 4G camera count to 900).

c. Lytx shall perform the de-installation and installation of DriveCam cameras in accordance with the mutually agreed upon schedule. Shipments of new DriveCam 4G cameras for installation will begin mid-March and all installs will be completed by June 30, 2021. With respect to any installation services purchased by SFMTA from Contractor, Contractor shall use commercially reasonable efforts to install the Products. SFMTA shall provide Contractor a safe, designated installation area protected from environmental hazards located in each of the bus parking lots. SFMTA shall provide Contractor with reasonable cooperation, including, without limitation, accurate information about vehicle types, and access to all necessary SFMTA personnel, facilities and equipment (including the Products) for the purpose of performing its obligations hereunder. Any Contractor installation services provided hereunder shall be subject to a mutually agreed installation schedule. SFMTA shall be responsible for ensuring availability of vehicles and Hardware (subject to supply by Contractor) and access to installation site on agreed installation date and shall comply with all reasonable instructions related to the installation.

No refunds shall apply for Contractor’s failure to complete an installation due to vehicle or Hardware unavailability, lack of advance notice of accurate vehicle information, or lack of access to installation site on agreed installation date. SFMTA will provide as many vehicles as possible per the requested schedule. SFMTA will strive to provide at least seven (7) days prior written notice to Contractor if the implementation schedule is delayed, extended or rescheduled at SFMTA’s request (in each case, with less than seven (7) days prior written notice to Contractor), SFMTA’s failure to provide Contractor access to vehicles, facilities and/or necessary equipment or any other reason caused by SFMTA, (including labor costs, travel, food, lodging, extra shipping fees and other project specific costs) and cancellation fees incurred by Contractor as a result of such change. SFMTA shall be responsible for approving the installation placement and technique on the initial Hardware for each major vehicle type (First Article Installation) including compliance with applicable laws. Such approval shall constitute authorization for Contractor to proceed with installation of remaining Hardware using the SFMTA-approved placement and technique in line with the installation procedures and documentation, once these are finalized and approved.

If installation services are not purchased by SFMTA hereunder, SFMTA assumes any and all liability resulting from such installation of Products, including, without limitation, liability resulting from failure to use a properly trained technician or failure to use proper installation tools. Contractor expressly disclaims any and all responsibility for any damages arising out of improper installation and maintenance of any Hardware not installed by, or on behalf of, Contractor. SFMTA shall defend, indemnify and hold Contractor and its officers, directors, agents, subcontractors and employees harmless from all damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) resulting from installation or maintenance of the Products by a party other than Contractor or its representatives.

7. Ownership of Data

As between Contractor and City, the City shall own the information, data and content captured by the video event recorders in City's possession as well as the related scoring information and analysis of such video events provided to City by Contractor ("Data"). However, the Contractor and its subcontractors shall have the right to use such Data in connection with performance hereunder and to improve and expand Contractor's products and services. Contractor shall have the right (which shall survive termination and expiration of this Agreement) to use and disclose the non-video and non-audio Meta-Data components of the Data for any purposes; provided that, Contractor does not indicate to any third party that such components were provided by, obtained from, or associated with, the City or City employees. Such usage rights shall continue and survive destruction of any video clips to which such Meta-Data components relate. For purposes of this Agreement, "Meta Data" means aggregated non-video and non-audio data that does not contain personally identifiable markings (for example, data relating to the forces triggering a risky driving event not the name of the employee causing the event.)

8. Maintenance and Support

a. Maintenance and Support Services

- 1) Maintenance and Support includes support for the Licensed Software and Hardware, in accordance with the terms and conditions set forth below. For purposes of this section, "Hardware" and "Licensed Software" refer only to hardware and software manufactured by Contractor.
- 2) Contractor shall use commercially reasonable efforts to provide the following support during Contractor's normal business hours (8 a.m. to 5 p.m. Pacific Standard Time): answering of telephone calls at a toll-free customer support telephone number (866) 910-0403 and e-mail support@Lytx.com.
- 3) City shall provide Contractor in writing with the name(s) and contact information of City's technical personnel who will liaison with Contractor regarding all technology-related matters. City may change such liaison(s) upon written notice to Contractor from time to time at reasonable intervals. Contractor shall not be obligated to provide support to any person other than the designated liaison(s).
- 4) Upon identification of a programming error in the Licensed Software, a malfunction in the Hardware, a problem in remotely accessing the Managed Services reports or data caused by Contractor, or other problems with respect to Contractor's provision of Services or Hardware hereunder, City shall promptly notify Contractor of such problems and provide Contractor with all information necessary for Contractor to locate and duplicate the problem. City agrees to provide Contractor with reasonable access

(including, without limitation, remote access) to all necessary City personnel, facilities and equipment (including the Products) for the purpose of providing the support services hereunder.

- 5) For any problem for which City has given Contractor notice under Section 8.A, Contractor (or its service representative) shall during Contractor's normal business hours, use commercially reasonable efforts to correct the problem, including providing a temporary workaround if one is available and repairing or replacing the malfunctioning Hardware or part.
- 6) Contractor shall not be obligated to provide such support services if the Hardware malfunction is not reproducible or is caused by (a) City's negligence or misuse, accident, fire, variation or interruption of electricity; (b) to the extent performed by City or its representatives, failure to properly install, maintain or use the Hardware; (c) alterations made by anyone other than Contractor or its representatives to the Hardware or the hardware or software that interfaces with the Hardware after installation; (d) any attempt to service the Hardware other than by Contractor or its service representatives (including the addition or removal of any third party hardware, peripherals or software); or (e) any software, equipment, or materials not approved or supplied by Contractor.
- 7) Contractor shall not be obligated to provide such support if the programming error in the Licensed Software is not reproducible or is caused by (a) City's failure to implement all updates to the Licensed Software provided to City by Contractor or use of a superseded version of the Licensed Software; (b) City's negligence or misuse or accident; (c) to the extent performed by City or its representatives, failure to properly, install, maintain or use the Licensed Software; (d) alterations made by anyone other than Contractor or its representatives to the Licensed Software or the Hardware or software that interfaces with the Licensed Software after installation; (e) any attempt to service the Licensed Software other than by Contractor or its service representative (including the addition or removal of any third party hardware, peripherals or software); (f) combination of the Licensed Software with any accessory, equipment, software or part not approved by or not supplied by Contractor; or (g) third party software, equipment or materials not approved in writing or supplied by Contractor.

9. Future Maintenance Service Charges. Contractor shall provide software maintenance and support services as described in the GSA Contract.

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

11. Warranties: Conformity to Specifications. For a period of three (3) years, Contractor warrants that when the Licensed Software and all updates and improvements to the Licensed Software are delivered to City, they will substantially conform to the Documentation.

12. Infringement Indemnification.

- 1) Contractor shall indemnify and hold City and its officers, directors, agents and employees harmless from all damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) actually awarded to a third party and resulting from infringement by the Licensed Software of any U.S. patent or copyright issued as of the date of this Agreement; provided that, Contractor is promptly notified of all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over their defense and settlement. Contractor shall not be responsible for any settlement it does not approve in writing.
- 2) If the Licensed Software becomes, or in Contractor's sole opinion is likely to become, the subject of an infringement claim or action, Contractor may in its

- discretion: (a) procure for City the right to continue using the Licensed Software; (b) replace or modify the Licensed Software so as to be free from infringement; or (c) accept return of the Licensed Software and refund the payments paid by City for such Licensed Software less a reasonable amount for use and damage.
- 3) Notwithstanding the provisions of Section 12(a) above, Contractor has no liability to City for (a) the combination of the Licensed Software with software, hardware or other materials not supplied or approved in writing by Contractor for use with the Licensed Software; (b) the activities of City, after Contractor has notified City that such activities may result in such infringement; (c) use or operation of the Licensed Software other than in strict accordance with the applicable Documentation; or (d) the modification of the Licensed Software, or any thereof, unless such modification was made by Contractor, where such infringement would not have occurred but for such modifications.
 - 4) **THE FOREGOING PROVISIONS OF THIS SECTION 12 STATE CONTRACTOR'S ENTIRE LIABILITY, AND CITY'S EXCLUSIVE REMEDY, WITH RESPECT TO THE LICENSED SOFTWARE OR ANY PART THEREOF.**

13. Payment. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until Licensed Software and services required under this Agreement are received from Contractor and approved by the City as being in accordance with this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

14. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City.

The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

15. Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and must include a unique identifying number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

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

17. Taxes. Payment of any taxes, including possessory interest taxes, and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor.

18. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, the Licensed Software, although the unsatisfactory character of such work, or Licensed Software may not have been apparent or detected at the time such payment was made. Software, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

19. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor.

20. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees means that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to Contractor, its employees, City employees or third parties, or to property belonging to any of the above.

21. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** 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 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.

b. **Payment of 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 the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

22. Indemnification and General Liability. Subject to the limitations set forth below, Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except where such loss, damage, injury, liability or claim is the result of active negligence or willful misconduct of City and in 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. Notwithstanding the foregoing, (i) the City acknowledges and agrees that

Contractor makes no guarantee that driving will be risk-free as a result of the use of Contractor's products and services, (ii) in no event shall Contractor be required to indemnify City for damages caused by City employees, and (iii) Contractor shall not have any obligation to indemnify City against wrongful discharge or similar employment claims by City's employees except to the extent a wrongful discharge is due to Contractor tampering with video events or otherwise providing City with a video event containing a material inaccuracy due to Contractor's actions.

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.

23. Incidental and Consequential Damages. Subject to the limitations set forth below, Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver of limitation of any rights which City may have under applicable law. IN NO EVENT SHALL CONTRACTOR OR ITS LICENSORS, SUPPLIERS, OR DISTRIBUTORS (COMBINED) BE LIABLE UNDER THIS AGREEMENT, THE BLANKET PURCHASE AGREEMENT, THE GSA CONTRACT OR ANY OTHER AGREEMENT INCORPORATED INTO SUCH AGREEMENTS BE REFERENCE, FOR ANY AMOUNTS EXCEEDING THE LESSER OF (i) THOSE ACTUALLY PAID BY SFMTA TO CONTRACTOR UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION ACCRUES OR (ii) ONE MILLION DOLLARS (\$1,000,000).

24. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 14 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

25. Force Majeure. Neither SFMTA nor the Contractor shall be liable under this Agreement because of any failure or delay in the performance of its obligations on account of strikes, shortages, riots, fire, flood, storm, earthquake, acts of God, hostilities, or any other cause beyond its reasonable control ("Unforeseen Events").

26. Nondisclosure. City agrees that it shall treat the Licensed Software with the same degree of care as it treats like information of its own, which it does not wish to disclose to the public, from the date the Licensed Software is Accepted by the City until the license is terminated as provided herein. The obligations of the City set forth above, however, shall not apply to the Licensed Software, or any portion thereof, which:

- a. is now or hereafter becomes publicly known;
- b. is disclosed to the City by a third party which the City has no reason to believe is not legally entitled to disclose such information;

- c. is known to the City prior to its receipt of the Licensed Software;
- d. is subsequently developed by the City independently of any disclosures made hereunder by Contractor;
- e. is disclosed with Contractor's prior written consent;
- f. is disclosed by Contractor to a third party without similar restrictions.

27. Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in the performance of 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 data.

Contractor agrees to provide access to any and all video recordings and database information to only those SFMTA employees who have been designated by the SFMTA to receive such information. Contractor shall not provide access to any SFMTA employee who has not been designated to receive this information.

28. Termination

a. **Basis for Termination by Contractor.** Contractor shall have the right to terminate this Agreement if City is delinquent in making payments of any sum due under this Agreement and continues to be delinquent for a period of ninety days after the last day payment is due; provided, however, that written notice is given to City by Contractor of the expiration date of the ninety-day delinquency period at least ten days prior to the expiration date or, to terminate this Agreement if City commits any other breach of this Agreement and fails to remedy such breach within thirty days after receipt of written notice by Contractor of such breach.

b. **Basis for Termination by City.** City shall have the right, without further obligation or liability to Contractor (except as specified in Sections 41 (Protection of Private Information) hereof): (i) to immediately terminate this Agreement or the applicable Authorization Document if Contractor commits any breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by City of such breach, in which event, Contractor shall reimburse City in the same manner as for the removal of the Licensed Software due to infringement under Section 12; or (ii) to terminate this Agreement or the applicable Authorization Document upon ninety (90) days prior written notice for any reason if the license granted hereunder is for any term other than perpetual. In the event the license granted is perpetual, termination of this Agreement or the applicable Authorization Document by City shall be effective upon receipt by Contractor of written notice of said termination.

29. Notice to the Parties. Except as otherwise set forth herein, all notices under this Agreement shall be in writing, and shall be deemed given when personally delivered, when sent by confirmed fax, when sent by courier with confirmed receipt, or three days after being sent by prepaid certified or registered U.S. mail to the address of the party to be noticed as set forth herein or such other address as such party last provided to the other by written notice.

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

To City: Robin Courtney, Manager
 SFMTA –Safety Division
 One South Van Ness Avenue, 6th Floor
 San Francisco, CA 94103
 Robin.courtney@sfmta.com

To Contractor: Shelley Bennett, General Counsel
 Lytx, Inc.
 9785 Towne Centre Drive
 San Diego, CA 92121
 notices@lytx.com

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

30. Subcontracting. Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing; provided, however, to the extent that Contractor uses subcontractors to perform installation services hereunder and the City agrees, in writing, to use of such subcontractors, Contractor shall remain responsible and liable for any and all of the Contractor's subcontractors' actions in carrying out Contractor's obligations under this Agreement.

Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

31. Assignment. The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

32. Bankruptcy. In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect.

33. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and

further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

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

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

36. 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.

37. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

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

39. 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.

40. Insurance

a. 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:

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

2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

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

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

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

c. Each policy on which SFMTA is an additional insured shall be endorsed to provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

Robin Courtney
SFMTA Safety Division
One South Van Ness Avenue, 6th Floor
San Francisco, CA 94103

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

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

f. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement

and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

g. 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.

h. 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.

i. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

j. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

k. Contractor will accept liability for all subcontractors work in performance of this contract and any sub-contractor work product, negligence, gross, or willful misconduct shall not be excluded from Contractor's insurance coverage as required under this agreement. Notwithstanding the foregoing, in no event shall Contractor's insurance coverage for actions by its subcontractors be required to exceed the coverage that would be afforded to actions by Contractor under such policies.

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

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

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

44. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision.

45. Severability. If any provision of the Agreement is held to be unenforceable by a court of competent jurisdiction, the Agreement shall be construed without such provision.

46. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws.

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

48. Signatories Have Read and Understand This Agreement. In signing this Agreement, the signatories affirm: (1) that they act as authorized employees and agents of the parties and have the authority to bind their respective employers; (2) that they have read, understand and will comply with the terms and conditions of this Agreement.

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

CITY

Recommended by:

Jeffery P. Tumlin
Director of Transportation
San Francisco Municipal Transportation
Agency

Approved as to Form:

Dennis J. Herrera
City Attorney

By:

John I. Kennedy
Deputy City Attorney

AUTHORIZED BY:

MUNICIPAL TRANSPORTATION
AGENCY BOARD OF DIRECTORS

Resolution No: _____

Adopted: _____

Attest: _____

Secretary, SFMTA Board of Directors

CONTRACTOR

Lytx, Inc.

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging

San Francisco companies to do business with corporations that abide by the MacBride Principles.

Shelley Bennett
Senior Vice President & General Counsel
9785 Towne Centre Drive
San Diego, CA 92121
Supplier Number: 0000016014