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

Eighth Amendment
Contract No. SFMTA No. 2014-48

THIS EIGHTH AMENDMENT (Amendment) is made as of **May 22, 2023**, in San Francisco, California, by and between TEGSCO, LLC (Contractor), and the City and County of San Francisco, a municipal corporation (City), acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. City and Contractor have entered into the Agreement (as defined below).

B. Under the Agreement, Contractor performs certain towing and storage operations at 450 7th Street, San Francisco ("Primary Storage Facility"), which premises City leases from the California Department of Transportation ("Caltrans").

C. On October 17, 2022—as contemplated by City and Caltrans' lease—Caltrans took possession of part of the Primary Storage Facility to perform on-site structural painting.

D. City and Contractor expect Caltrans' work at the Primary Storage Facility may continue for the remainder of the Agreement's term, requiring that Contractor relocate part of its towing and storage operations to one or more Temporary Storage Facilities (as defined below) during that time.

E. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to (i) add to the scope of services As-Needed Relocation Services for Contractor to relocate to a Temporary Storage Facility; and (ii) add provisions, under which City may issue task orders for Contractor to perform these As-Needed Relocation Services.

F. The Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through Request for Proposal No 2014-48, issued July 26, 2015, and this Amendment is consistent with the process.

NOW, THEREFORE, Contractor and the City agree as follows:

Article 1 Definitions

The following definitions shall apply to this Amendment:

1.1 **Agreement.** The term "Agreement" shall mean the Agreement dated April 1, 2016, between Contractor and City, as amended by the:

First Amendment, dated October 1, 2016,

Second Amendment, dated July 1, 2019,

Third Amendment, dated April 1, 2021,

Fourth Amendment, dated April 11, 2022,

Fifth Amendment, dated April 12, 2022,

Sixth Amendment, dated June 17, 2022, and

Seventh Amendment, dated November 4, 2022.

1.2 **As-Needed Relocation Services.** The term "As-Needed Relocation Services" shall mean the Services Contractor performs under task order to relocate— temporarily or for the remainder of the Agreement's term—any of its towing and storage operations to a Temporary Storage Facility. Examples of As-Needed Relocation Services are included in Appendix A (Scope of Service), Article V (Storage and Customer Service Facilities), Section B.2.

1.3 **Temporary Storage Facility.** The term "Temporary Storage Facility" shall mean any location within the City and County of San Francisco that the City identifies as an alternative facility—either temporarily or for the remainder of the Agreement's term—for the Primary Storage Facility.

1.4 **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

Article 2 Modifications to the Agreement

The Agreement is modified as follows:

2.1 Section 3.3.1 (Payment) of the Agreement is replaced in its entirety to read as follows:

3.3.1 Payment

(a) Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges."

(b) Compensation shall be made for Services identified in the invoice that the SFMTA's designee, in their sole discretion, concludes has been

satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall City be liable for interest or late charges for any late payments.

(c) Except for As-Needed Relocation Services, the breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," incorporated by reference as though fully set forth herein. The charges for As-Needed Relocation Services shall be set forth in a corresponding task order the SFMTA's issues in accordance with Section 4.1.2.

(d) In no event shall the amount of this Agreement exceed $121,400,000 (one hundred twenty-one million, four hundred thousand dollars).

2.2 Section 4.1 (Services Contractor Agrees to Perform) is replaced in its entirety to read as follows:

4.1 Services Contractor Agrees to Perform

4.1.1 General. Contractor agrees to perform the Services described in Appendix A. Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Statement of Services described in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.1.2 Task Orders; Task Order Process. The City may issue task orders on an as-needed basis for As-Needed Relocation Services. The City will define task order requirements and City and Contractor will agree on pricing and schedule before Contractor starts work on any task order; except that City does not guarantee it will issue any task orders under the Agreement. The task order process is described, below.

(a) Task Order Request. The City will provide to Contractor a task order request, using the form in Exhibit 2 (Task Order Form) that includes the following: (i) the scope of Services, including any deliverables; (ii) the deadline to respond to the task order request with a task order proposal; and (iii) the expected schedule (including key milestones) to complete the task order.

(b) Information and Data. Upon receiving a task order request form, Contractor shall request in writing any information or data it requires to complete the corresponding task order proposal and perform the Services under the task order. City and Contractor will reach agreement as to the availability and delivery time for this data and information during initial task negotiations.

(c) Task Order Proposal. Contractor shall prepare and submit a task order proposal that includes:

(i) A work plan that includes: (1) a detailed description, by task and, if applicable, subtask, of the scope of Services to be performed under the task order; (2) the materials and equipment to be used to perform the task order; (3) and Contractor's approach to performing the Services and completing the task order.

(ii) A schedule to complete the task order, including key milestone dates to complete each task, subtask, and deliverable, as applicable.

(iii) A list of personnel, including any subcontractors, Contractor proposes to work on the task order; and, for each personnel and subcontractor, a description of the task(s) or subtask(s) they will perform.

(iv) A detailed cost estimate for each task, subtask or deliverable showing:

(1) Estimated labor hours and direct, hourly labor rates by position for both Contractor and subcontractor personnel. Labor hours for preparing monthly invoices or filling out required LBE forms, if any, will not be allowed. Contractor will manage subcontractors so additional subcontractor program-management labor hours will not be allowed. Overtime labor hours will be allowed only with prior written approval from the City. If overtime is approved, it will be billed at the billing rates listed and not at one- and one-half times the billing rate;

(2) Estimated cost of materials and equipment;

(3) Estimated reasonable out-of-pocket and other costs;

(4) Overhead rates, including salary burden costs for both Contractor and subcontractors;

(5) Proposed profit as follows: total profit mark up of each task order as fixed fee amount not to exceed 15% of total amount of the task order, regardless whether task order is being performed by Contractor, subcontractor, or combination thereof; and

(6) Proposed lump sum price for task order.

(d) **Negotiation of Price and Terms.** The City will review the task order proposal and negotiate with Contractor a final lump-sum price and terms. If the Parties cannot agree on terms, including price, the SFMTA may either (1) cancel the task order and have the Work accomplished through other available sources, or (2) direct Contractor to proceed with the task order on a

force-account basis, with payment to Contractor fixed at Contractor's actual, direct costs of labor, materials, and equipment to perform the task order plus a 15% markup for overhead and profit, subject to an amount not to exceed. Under no circumstances may Contractor refuse to undertake a City-ordered task.

(e) **Subcontracting Goals.** The City will review the final negotiated task order scope and schedule and determine the subcontracting or LBE goal, if any. Subcontracting or LBE goals, if any, assigned to a task order shall be tracked by the City as part of the overall goal set forth in the Agreement.

(f) **Notice to Proceed.** The City will issue and send to Contractor a written notice to proceed (NTP), task order number, and purchase order after verifying that sufficient funds are available to pay for the task order. Contractor shall not commence work under any task order until it receives a corresponding NTP and purchase order from the SFMTA. Proposer shall use this task order number when submitting invoices to the City's project manager for payment in accordance with Section 3.3.1.

(g) **Changes to Task Order Pricing.** Task order pricing shall not be modified unless there is a material change in the task order's scope of Services, in which case a new task order proposal, pricing negotiation, record of negotiations, and notice to proceed shall be required before City approves the change in pricing.

2.3 Section 4.3 (Designated Facilities) is replaced in its entirety to read as follows:

4.3 Designated Facilities. Contractor shall perform the Services required under this Agreement at the Long-term and Primary Storage Facilities and, if so requested by City, at one or more Temporary Storage Facilities, all of which shall be located on premises designated by City.

4.3.1 Long-term Storage Facility. As of the Effective Date of this Agreement, the City has designated 2650 Bayshore Boulevard, Daly City, California as the site of the Long-term Storage Facility. Contractor shall operate the Long-term Storage Facility from 2560 Bayshore Boulevard in accordance with the terms and conditions of the "2650 Bayshore License," attached as Appendix D to the Agreement (dated April 1, 2016) and incorporated by reference as though fully set forth herein. At any time during the term of this Agreement, City may, at its sole discretion, designate a new facility to serve as the Long-term Storage Facility, and may require Contractor to relocate to that facility in accordance with a corresponding task order issued under Section 4.1.2 and license agreement with terms and conditions substantially similar to the 2650 Bayshore License

4.3.2 Primary Storage Facility. As of the Effective Date of this Agreement, the City designates 450 7th Street, San Francisco, California as the site of the Primary Storage Facility. As of October 1, 2016, Contractor shall operate the Primary Storage Facility from 450 7th Street in accordance with the terms and conditions of the Revocable License to Enter and Use Property at 450 7th Street ("the 7th Street License"), attached as Appendix F to the Second Amendment and incorporated by reference as though fully set forth herein. At any time during the term of this Agreement, City may, at its sole discretion, designate a new facility to serve as the Primary Storage Facility, and may require Contractor to relocate to that facility in accordance with a corresponding task order, issued under Section 4.1.2, and license agreement with terms and conditions substantially similar to the 7th Street License.

4.3.3 Temporary Storage Facility. The parties acknowledge that on-site structural painting or other work by Caltrans at the Primary Storage Facility may require that Contractor relocate—temporarily or for the remainder of the Agreement's term—all or part of Contractor's towing- and storage-related operations to one or a Temporary Storage Facilities. In such case, Contractor agrees to (i) execute with the City a license agreement for the Temporary Storage Facility, which shall have terms and conditions substantially similar to the 2650 Bayshore License and 7th Street License; and (ii) relocate all or part of Contractor's towing- and storage-related operations in accordance with a task order the City issues under Section 4.1.2, the terms of which Contractor agrees to negotiate with the City in good faith.

2.4 Appendix A (Scope of Services), Article V (Storage and Customer Service Facilities), Section B (Facility Relocation or Consolidation) is replaced in its entirety to read as follows:

B. Facility Relocation or Consolidation; As-Needed Relocation Services

1. The SFMTA, in its sole discretion, reserves the right to move the Primary Storage Facility or Long-term Storage Facility to another location, temporarily or for the remainder of the Agreement's term, or to consolidate these facilities.

2. In the case of such a move or consolidation, and only if so requested by the SFMTA, Contractor shall perform certain As-Needed Relocation Services that may include without limitation the following:

a) perform site preparation work (e.g., cleaning and clearing of site);

b) electrical work and repairs;

c) install or build and maintain on-site improvements (e.g., fencing, lighting, security cameras, waiting area canopy or tent, temporary offices and other temporary structures);

d) install and maintain portable toilets;

e) secure equipment for on-site towing- and storage-related operations (e.g., forklifts, forklift attachments, etc.);

f) provide staff, including security guards, lot attendants, customer-service personnel, and cleaning personnel;

g) move on site impounded vehicles from Primary Storage Facility;

h) obtain insurance or other security.

The SFMTA, in its sole discretion, reserves the right to add to these As-Needed Relocation Services additional services of a similar scope as required to facilitate Contractor's move or consolidation. The scope and price for As-Needed Relocation Services shall be established on a case-by-case basis and documented in a task order. (*See* task order process in Section 4.1.2)

2.5 A revised Appendix B (Calculation of Charges) is attached to this Addendum as Exhibit 1.

2.6 A new Exhibit 2 (Task Order Form) is attached to this Addendum.

Article 3 Effective Date

Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

Article 4 Legal Effect

Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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

CITY	CONTRACTOR
San Francisco **Municipal Transportation Agency** Jeffrey P. Tumlin Director of Transportation Approved as to Form: David Chiu City Attorney By: Isidro Jimenez Isidro Alarcón Jiménez Deputy City Attorney	**TEGSCO, LLC** Frank Mecklenburg Frank Mecklenburg CEO City Supplier Number: **48588**

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Exhibits:

Exhibit 1 Appendix B—Calculation of Charges (Revised)

Exhibit 2 Task Order Form

EXHIBIT 1
APPENDIX A—CALCULATION OF CHARGES (REVISED)

Monthly Management Fee:

At the beginning of each calendar month of service, Contractor shall provide an invoice to the SFMTA for the fixed monthly management fee for the same service month in the amount of $665,356, as adjusted based on the terms of this Appendix B. Payment of the invoice shall not be made until after the service month is complete. Should tow volume increase or decrease significantly, requiring a change in staffing levels, the SFMTA and Contractor will in good faith renegotiate the fixed monthly management fee to ensure that the cost per tow to the public is not impacted.

Beginning May 1st, 2020 and for the remainder of the contract term, the monthly management fee shall otherwise owing to Contractor shall be reduced by $39,274.00, which amount will be referred to as the "credit reduction in management fee."

Beginning May 1st 2021 through March 31st, 2023, the monthly management fee shall be temporarily fixed at $706,318.31. To accomplish this, a "CPI give-back" total was established and subtracted from the adjusted monthly management fee otherwise owing to Contractor during this period, as show in the table below. The CPI give-back expired March 31st, 2023, and will no longer be credited after that date.

Fixed Management Fee	May 1st, 2020	May 1st, 2021	May 1st, 2022
Monthly Management Fee	$ 745,592.31	$ 758,767.39	$ 758,767.39
Credit Reduction in Management Fee	$ (39,274.00)	$ (39,274.00)	$ (39,274.00)
CPI give back	$ -	$ (13,175.08)	$ (35,938.10)
Net Monthly Management Fee	$ 706,318.31	$ 706,318.31	$ 706,318.31

Per-Unit Fees:

Within 10 days after the end of each calendar month of service, Contractor shall provide an invoice to the SFMTA for Services completed in the immediately preceding month for the following per-unit fees, as adjusted based on the terms of this Appendix B:

Fee Type	Fee Amount
Tow fee (per vehicle towed)	$66.55
Dolly/flatbed fee (per vehicle)	$40.63
Transfer fee (per vehicle transferred to LSF)	$31.05
Lien processing fee (per vehicle)	$15.72
Auction fee (per vehicle sold)	$73.59
Dropped Tow fee (per vehicle)	$14.51
Text-Before-Tow Drop fee (per vehicle)*	$38.00

* Text-Before-Tow Drop fee added by the SFMTA on May 1st, 2023.

Annual Adjustments to Fees:

Each year, on the first calendar day of the month following the anniversary of the Effective Date of the Agreement, fees listed in this Appendix B, including the fixed monthly management fee and per-unit fees, shall be adjusted either: (1) in direct proportion to the percentage increase in the current Consumer Price Index for Urban Wage Earners for the San Francisco Bay Area ("CPI") for the month immediately preceding the applicable anniversary date ("Current Index") over the CPI for the month of March 2016 ("Base Index"), or (2) by 3%, whichever is lower. If the Current Index has increased over the Base Index, the adjusted fee amount shall be calculated by multiplying the current fee amount by a fraction, the numerator of which is the Current Index and the denominator of which is the Base Index, as follows:

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

On May 1st, 2018 and May 1st, 2023, the SFMTA increased the "Dropped Tow fee" (per vehicle) from $14.95 to $20.56 and $22.76, to $30.00, respectively, in each case by more than the annual adjustments otherwise authorized under this Appendix B. The SFMTA reserves the right to make similar increases in fees by more than the amounts otherwise authorized in the Appendix B.

As-Needed Relocation Services:

Within 10 days after the end of each calendar month of service, Contractor shall provide an invoice to the SFMTA for As-Needed Relocation Services, if any, completed in the immediately preceding month. Payment terms for said work shall be set forth in the corresponding task order issued under Section 4.2.

EXHIBIT 2

TASK ORDER FORM

San Francisco Municipal Transportation Agency

Contract No. and Title:

Task Title:

Date Initiated:

Type of Request (Check one):

☐ **New Task Order- No.:**

☐ **Modification - No.:** **(attach approved original task order and all modifications to date)**

Estimated Start Date:
Estimated Completion Date:

Project Title:

Scope of Services to be Performed:
[*Brief Description*]

Deliverables:

Description	Date Due	Quantity