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

# Fourth Amendment

## Contract No. 2014-48

THIS AMENDMENT (Amendment) is made as of April 11, 2022, 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. On April 1, 2016, the City and Contractor, at the time dba San Francisco AutoReturn, entered the Agreement (defined below) for an initial amount not to exceed of $65,400,000 and an initial five-year term, with an option to extend up to five additional years.

B. On April 1, 2021, the City and Contractor executed the Third Amendment to update standard contractual provisions; exercise the option to extend the term five years, ending March 31, 2026; and increase the amount not to exceed by $22,800,000 to $88,200,000.

C. The $22,800,000 increase in the amount not to exceed only covered the first two years of the five-year extension, giving the SFMTA time to assess how the ongoing COVID-19 pandemic will impact the towing program costs, and re-evaluate program policies and funding as the City emerges from pandemic conditions.

D. On April 7, 2021 (Resolution No. 153-21), the Board of Supervisors retroactively authorized the Director of Transportation (DOT) to execute the Third Amendment, resolving, in part, that the DOT separately approve, in the second year of the extension, the final $11,600,000 of the $22,800,000 increase in the amount not to exceed; the Director of Transportation approved the final $11,600,000 before the effective date of this Amendment

E. On August 17, 2021, Contractor stopped using the dba name, San Francisco AutoReturn, and began using its legal name, TEGSCO, LLC, in San Francisco, which required that Contactor obtain a new supplier number with the City.

F. City and Contactor desire to modify the Agreement on the terms and conditions set forth herein to update certain standard contractual provisions and memorialize Contractor's dba name change.

G. The Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals on June 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**, date July 1, 2019, and

**Third Amendment**, dated April 1, 2021

1.2 **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 New Section 11.14 is added to Article 11 (General Provisions) to read as follows:

**11.14 Change in Doing-Business-As Name.** Contactor no longer operates in San Francisco using the dba "San Francisco AutoReturn" or "AutoReturn." All references to "San Francisco AutoReturn," "AutoReturn," or any variation of these names, in the Agreement (and in all other provisions in amendments to the Agreement) are hereby replaced with "TEGSCO, LLC." Contractor has obtained a new City supplier number under the name "TEGSCO, LLC," which is shown on the signature page at the end of this Amendment.

2.2 Article 14 (Management of Private, Proprietary or Confidential Information and City Data) is revised in its entirety to read as follows:

### Article 14

### Management of Private, Proprietary or Confidential Information and City Data

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

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

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

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

**14.5 Disposition of Confidential Information.** Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than 30 Days, return all Data given to or collected by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that the City Data has been successfully transferred to City, Contractor shall within 10 business days clear or

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

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

## Article 3 Effective Date

Each of the modifications set forth in Section 2 shall be effective on and 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**<br>**Municipal Transportation Agency**<br><br>Jeffrey P. Tumlin<br>Director of Transportation<br><br>Approved as to Form:<br><br>David Chiu<br>City Attorney<br><br>By: Isidro Jimenez<br>Isidro Jimenez<br>Deputy City Attorney | **TEGSCO, LLC**<br><br>Frank Mecklenburg<br>CEO<br><br>City Supplier Number: 48588 |

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