City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, California 94103
Third Amendment
Contract No. 2014-48

THIS AMENDMENT (Amendment) is made as of April 1, 2021 in San Francisco, California, by and between TEGSCO, LLC., dba San Francisco AutoReturn (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. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to update certain standard contractual provisions, exercise the Agreement's option to extend its term for five years, ending March 31, 2026, and increase the amount of the Agreement by $22,800,000 to $88,200,000 to pay for the first two years of the extended term.
C. Before the end of the second year of the extended term, pending availability of City funding, City intends to modify the Agreement again to increase the amount of the Agreement to pay for the last three years of the extended term.
D. 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.
E. The City's SFMTA Board of Directors approved the Agreement, including the option to extend for up to five years by Resolution No. 16-024 on February 16, 2016; the Board of Supervisors approved the Agreement by Resolution No. 0099-16 on March 15, 2016.
F. The two licenses that authorize Contractor's use, in connection with the Agreement, of the vehicle storage facilities at 2650 Bayshore Boulevard, Daly City, and 450 7th Street, San Francisco (respectively, Appendices D and F of the Agreement) provide that these licenses shall be automatically extended for the same period of the Agreement's extended term.

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 and

Second Amendment, date July 1, 2019

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 Article 1 (Definitions). New Sections 1.14 and 1.15 are added to Article 1 of the Agreement to read as follows:

1.14 "**City Data**" or "**Data**" means all data given to Contractor by City in the performance of this Agreement.

1.15 "**Confidential Information**" means confidential City information including, but not limited to, personally-identifiable information (PII), protected health information (PHI), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

2.2 Section 2.1 of Article 2 (Term of Agreement). Section 2.1 of the agreement is replaced in its entirety to read as follows:

2.1 The term of this Agreement shall commence on April 1, 2016, and expire March 31, 2026, unless earlier terminated as otherwise provided herein.

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

3.3.1 Payment. 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." Compensation shall be made for Services identified in the invoice that the SFMTA's designee, in his or her 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 the amount of this Agreement exceed $88,200,000 (eighty-eight million, six hundred thousand dollars). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In no event shall City be liable for interest or late charges for any late payments

2.4 3.6 (Withholding). A new Section 3.6 is added to the Agreement to read as follows:

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

2.5 Section 4.6 (Assignment). Section 4.6 of the Agreement is replaced in its entirety to read as follows:

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

2.6 Section 10.11 (Limitations on Contributions). Section 10.11 of the Agreement is replaced in its entirety to read as follows:

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

Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

2.7 Article 14 (Management of Private, Proprietary or Confidential Information and City Data). A new Article 14 is added to the Agreement to read as follows:

Article 14 Management of Private, Proprietary or Confidential Information and City Data.

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

14.2 Confidential Information. In the performance of Services, Contractor may have access to 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, 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.

14.3 Access to City Data. City shall at all times have access to and control of City Data, and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

14.4 Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information 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's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information 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 or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data 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 termination of Agreement or request of City, Contractor shall within 48 hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, 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.

14.6 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 to Contractor by City in the performance of this, 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 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 **San Francisco** **Municipal Transportation Agency** **Jeffrey P. Tumlin** Director of Transportation San Francisco Municipal Transportation Agency Board of Directors Resolution No: 200216-023 Adopted: February 16, 2021 Attest: _____ Secretary, SFMTA Board of Directors Board of Supervisors Resolution No: 153-21 Adopted: April 13, 2021 Attest: _____ Clerk of the Board Approved as to Form: Dennis J. Herrera City Attorney By: _____ **Isidro Jimenez** Deputy City Attorney	CONTRACTOR **TEGSCO, LLC., dba San Francisco AutoReturn** **John Wicker** President and CEO City Supplier Number: **11631**

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