

## **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

This Settlement Agreement and Release of Claims (“Agreement”) is entered into on May 16, 2007, by and between California Council of the Blind (“CCB”); San Francisco LightHouse for the Blind and Visually Impaired (“The LightHouse”); Independent Living Resource Center San Francisco (“ILRC”); and Damien Pickering, an individual (hereafter collectively “Claimants”); and the City and County of San Francisco, acting through the Municipal Transportation Agency (hereinafter referred to as “City” or “SFMTA”). Claimants and the City are hereinafter referred to collectively as “the Parties.”

### **I. RECITALS**

WHEREAS, A dispute has arisen between the Parties concerning whether the City provides Claimants and blind and other visually-impaired persons with legally required access to information provided by pedestrian signals in San Francisco; and

WHEREAS, On April 6, 2004, the Parties entered into a Structured Negotiations Agreement, to preserve the Parties’ respective rights during negotiations, to allow a period of APS equipment testing, to toll the statute of limitations and to provide for the retention of an APS expert consultant to assist the Parties during the settlement negotiation process; and

WHEREAS, Negotiations between the Parties, which included an APS pilot project to test emerging APS technology, have resulted in the installation of APS units purchased from Polara or Novax at various Intersections in San Francisco;

WHEREAS, The Parties have reviewed commercially available APS technology and research regarding the safety and accessibility of available APS technology as of the date of this Agreement and have agreed upon the standards set forth in the Technical Specifications attached hereto as Exhibit A;

WHEREAS, the Parties have a shared goal of establishing a comprehensive program regarding installation and maintenance of APS in San Francisco, and this Agreement, which among other things establishes a framework for on-going cooperation between the City and the blind and visually impaired community, represents the first step in achieving that goal;

NOW, THEREFORE, in order to avoid the burden and expense of litigation, to agree upon and implement a plan to effect the intent of the Parties, and for good and valuable consideration, the receipt of which is hereby acknowledged, including

the representations, warranties, and covenants contained in this Agreement, the Parties hereby agree as follows:

## **II. DEFINITIONS**

As used in this Agreement, the following terms shall have the meaning ascribed to them in this Section. Capitalized terms used in this Agreement and not defined in this Section II are defined in the Technical Specifications.

**“Agreement”** shall mean this Settlement Agreement and Release of Claims and all Exhibits attached hereto.

**“APS”** shall mean a Pushbutton-Integrated device that communicates information about Pedestrian Timing in a non-visual manner, such as audible tones, speech messages, and vibrating surfaces, and has the following features to the extent that they are available from an APS vendor: (1) a Pushbutton Locator Tone; (2) a pushbutton actuation tone and light in response to the button push to indicate that the button has been pressed; (3) an Audible Walk Indication; (4) a Vibrotactile Walk Indication; (5) automatic volume adjustment in response to ambient sound; (6) a tactile arrow; (7) a Pushbutton Information Message; (8) street name in Braille and Large Print; and (9) a Pushbutton with a 2” minimum diameter.

**“APS Consultant”** shall mean a contractor to be retained by City for expert consulting services related to APS. The APS Consultant shall be an orientation and mobility specialist certified by the Academy for Certification of Vision Rehabilitation and Education Professionals and an expert in APS.

**“APS Intersection”** shall mean an Intersection where APS are installed on both ends of every Crosswalk in the Intersection. For example, an Intersection with four crosswalks becomes an APS Intersection when eight APS are installed at the Intersection.

**“Claimants’ Counsel”** shall mean Goldstein, Demchak, Baller, Borgen & Dardarian and The Law Office of Elaine B. Feingold, and the attorneys practicing law therein.

**“Claimants’ Priority List”** shall mean that certain list of Intersections that are a high priority for APS installation as identified by the Claimants, attached hereto as Exhibit B and fully incorporated herein.

**“Effective Date”** shall mean that date the SFMTA Board of Directors approves this Agreement, or the date that all Parties have signed this Agreement, whichever is later.

**“Individual APS Request Policy”** shall mean the policy to be adopted pursuant to Section IV.I.1 of this Agreement for the intake and processing of public requests for APS installations.

**“Intersection”** shall mean a location with one or more pedestrian crosswalks, including mid-block crossings, and with one or more Visual Pedestrian Signals associated with the crosswalks.

**“Intersection Assessment”** shall mean the process of evaluating an Intersection in accordance with the standards set forth in the Prioritization Tool, for the purpose of assigning an Intersection Score to an Intersection being evaluated for APS installation.

**“Intersection Score”** shall mean the numerical score assigned to an Intersection following an Intersection Assessment using the Prioritization Tool attached hereto as Exhibit C.

**“Phase 1 Pilot Project Intersections”** shall mean the following Intersections at which APS technology has been installed as of the Effective Date:

1. Market and Van Ness,
2. Market and Powell,
3. 8<sup>th</sup> and Hyde/Market,
4. Fulton and Larkin,
5. Potrero Ave. between 22<sup>nd</sup> and 23<sup>rd</sup> (San Francisco General Hospital), and
6. Polk and Grove.

**“Phase 2 Pilot Project Intersections”** shall mean the following Intersections:

1. 2<sup>nd</sup> & King
2. Pacific & Stockton
3. Embarcadero & Ferry Building
4. Grove & Van Ness
5. Ocean & San Jose
6. Fremont & Mission
7. Mid-block crossing signal on Phelan Avenue at City College.

**“Prioritization Tool”** shall mean the document containing standards for conducting an Intersection Assessment for the purpose of prioritizing Intersections for APS installation based upon evaluation factors and weights specified in the Prioritization Tool, which is attached hereto as Exhibit C and incorporated by reference as though fully set forth herein.

**“Public APS Request List”** shall mean the list of requests received from members of the public for APS installations at particular Intersections within San Francisco. The Public APS Request List that exists as of the Effective Date of this Agreement is attached hereto as Exhibit D and incorporated by reference as though fully set forth herein.

**“SFMTA Board”** shall mean the Municipal Transportation Agency Board of Directors.

**“Status Meeting”** shall mean the regularly scheduled meeting between the Parties to this Agreement as described in Section IV.J.1 of this Agreement.

**“Technical Specifications”** shall mean the technical standards for APS. The Parties hereby agree upon a current set of Technical Specifications for APS, attached hereto as Exhibit A and incorporated by reference as though fully set forth herein.

### **III. TERMS AND CONDITIONS**

#### **A. Required Approval**

This Agreement is subject to the prior approval of the SFMTA Board.

#### **B. No Admission of Liability**

In entering into this Agreement, the City does not admit, and specifically denies, that it has violated or failed to comply with any provisions of any applicable laws of any state relating to accessibility for persons with visual impairments, any regulations or guidelines promulgated pursuant to those statutes, or any other applicable laws, regulations, or legal requirements. By entering into this Agreement, no party is admitting the sufficiency of any claim, allegation, assertion, contention or position raised by the other party or the sufficiency of any defense to any such claim, allegation, assertion, contention or position. The City’s entry into this Agreement is not and may not be used by any person or organization as an admission or evidence that the City has engaged in any practice that violates any law or regulation.

### **C. Entire Agreement**

This Agreement contains the entire agreement between the Parties. This Agreement expresses the complete and final understanding with respect to the subject matter of this Agreement. The Parties hereto understand and agree that the terms of this Agreement supersede any prior discussions, understandings, or agreements between them related to the subject matter hereof.

### **D. Authority**

The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement and to bind parties on whose behalf they execute this Agreement, that the Agreement does not require court approval, and that it does not conflict with or contravene the terms of any agreement, judgment or order binding or enforceable against the Parties hereto.

### **E. Voluntary Agreement**

The Parties each acknowledge that they are entering into this Agreement freely, knowingly, voluntarily and with a full understanding of its terms. The Parties acknowledge that they have consulted with counsel of their own choosing concerning this Agreement and that they were given reasonable time to review and consider the terms of this Agreement.

### **F. Construction**

The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. The terms of this Agreement are the product of joint negotiations and shall not be construed as having been authored by one party rather than another. Any ambiguity shall not be construed against any Party. Where required by context, the plural includes the singular and the singular includes the plural. The headings in this Agreement are solely for convenience and will not be considered in its interpretation.

### **G. Severability**

If any provision or provisions of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and/or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

### **H. Counterparts**

This Agreement may be executed in counterparts, each of which will be considered an original, but all of which, when taken together, will constitute one and the same instrument.

#### **I. Controlling Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

#### **J. Change of Law During Term of the Agreement**

If any party to this Agreement contends that there is a change in any applicable law or regulation relating to APS that will require modification of this Agreement, that party shall notify the other party in writing. The notification will include a specific proposal for the amendment of the language of this Agreement as required by the change in law or regulation. Within ten (10) business days of receipt of notice of the proposed amendment, the other party shall provide a written statement setting forth its response to the proposed amendment. If the Parties are in agreement regarding the proposed modification, the modification shall be offered as soon as possible to the SFMTA Board for its consideration with a request for its approval. If the Parties cannot reach agreement regarding the proposed amendment within sixty (60) calendar days from the date of the original notice of proposed amendment, the proposed amendment shall be submitted to Dispute Resolution pursuant to Section VII.B below.

#### **K. Additional Documents**

To the extent any documents are required to be executed by any of the Parties to effectuate this Agreement, each party hereto agrees to execute and deliver such and further documents as may be required to carry out the terms of this Agreement.

#### **L. Force Majeure**

Neither party shall be liable for breach of this Agreement when any failure to comply with a requirement of this Agreement is due to causes beyond the reasonable control of the party required to perform, such as acts of God, acts of terrorism, acts of civil or military authority, civil disturbances, labor disputes, government order or regulation, abnormal weather conditions, earthquakes, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, and inability due to causes beyond the reasonable control of the party to obtain necessary labor, materials or manufacturing facilities, and in such event the party required to perform shall perform as soon as such cause is removed. In the event

that a party wishes to invoke this Section III.L it shall provide written notice to the other party as soon as practicable of the conditions that are preventing performance, the performance obligations under this Agreement that are affected by those conditions, whether the party whose performance is affected anticipates that it will be able to complete performance when the conditions are removed, and if so, when performance of the obligation is anticipated to be completed.

**M. No Third Party Beneficiaries**

The Agreement is for the benefit of the Parties hereto only and no other person or entity shall be entitled to rely hereon, receive any benefit here from, or enforce against either party any provision hereof. The Parties specifically intend that there be no third party beneficiaries to this Agreement.

**N. Modification**

No modification of this Agreement by the Parties shall be effective unless it is in writing and executed and approved in the same manner as the original Agreement.

**O. Notices to the Parties**

Except as otherwise provided in this Agreement, all notifications, reports and communications to the Parties required under this Agreement shall be made in writing and shall be sufficient by regular mail and electronic mail, with all attachments in Microsoft Word format, to the following persons:

<p>For SFMTA: Cristina Olea Pedestrian Program Manager San Francisco Municipal Transportation Agency 1 South Van Ness Avenue, 7<sup>th</sup> Floor San Francisco, CA 94103  Cristina.Olea@sfmta.com</p>	<p>For Claimants: California Council of the Blind Eugene Lozano, Jr. 4537 Sycamore Ave; Sacramento, CA 95841 lozanoe@csus.com  Anita Aaron LightHouse for the Blind 214 Van Ness Ave. San Francisco, CA 94102 aaron@lighthouse-sf.org  Linda M. Dardarian Goldstein, Demchak, Baller, Borgen &amp; Dardarian 300 Lakeside Drive, Suite 1000 Oakland, CA 94612 ldardarian@gdblegal.com</p>
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Any party may change such persons and/or addresses by written notice to the other Parties, which shall include new contact information for that party.

#### **IV. WHAT THE CITY WILL DO**

The City agrees to take the following actions during the term of this Agreement:

- A. APS Funding.** SFMTA agrees to expend at least \$1,600,000.00 (one million six hundred thousand dollars) for APS planning, installation and administration for the Intersections at which APS are to be installed pursuant to this Agreement.
  - 1. Additional Funding.** SFMTA will seek additional funding other than the funding identified in this Agreement for APS during the term of this Agreement, including but not limited to funding through the SFMTA budget, and through federal, state and local funding sources. Except for the amount specified in Section IV.A above, the Parties understand that SFMTA requests for APS funding in its budget or applications for grants and loans do not guarantee that the SFMTA will receive funding as a result of any funding request.
  - 2. Cooperation with Other City Agencies.** The Parties recognize that in addition to SFMTA, other departments, agencies, commissions, boards, and councils of the City and County of San Francisco, including but not limited to the Mayor's Office on Disability and the Mayor's Disability Council, may be able to provide or assist in obtaining funding for APS beyond the funding identified in this Agreement. Throughout the term of this Agreement, SFMTA agrees to work with and coordinate the efforts of all such City departments and agencies towards the Parties' shared goal of increasing APS funding beyond the amount stated in this Agreement. The Parties agree to support each other's efforts to obtain additional APS funding from such other City departments, agencies, boards, commissions, and councils, including from the Office of the Mayor, and from the San Francisco Board of Supervisors.
  - 3. Caltrans Intersections.** SFMTA will request that CalTrans participate in the cost of APS installation at any Intersection scheduled for signal upgrades, installation or alteration that is

part of the State highway system in the City. SFMTA will request that Caltrans install APS that comply with the Technical Specifications described in Section IV.D, below, at all Intersections in the City that are part of the State highway system, including but not limited to State Route 1, at which signal upgrades, installation or alteration will take place.

4. **Allowable SFMTA Expenses.** Allowable SFMTA expenses for APS under this Agreement include APS equipment, extended warranties, incremental costs of planning (such as intersection scoring, public outreach for APS, the APS Consultant contract expenses and administration of SFMTA APS policies), new Intersection design and Intersection modification design directly attributable to APS, installation costs, and any troubleshooting or adjustments to APS installations that are required by problems unique to APS technology, project management costs, and any other APS related costs mutually agreed to by the Parties. How to apportion the funding among allowable expenses for APS within the requirements of this Agreement is a matter within the discretion of the SFMTA.

**B. Specific APS Intersections.** SFMTA agrees to complete at least eighty (80) new APS Intersection installations at currently signalized Intersections by December 31, 2009, as follows:

1. **Phase 2 Pilot Project Intersections.** By June 30, 2007, SFMTA agrees to complete APS installation at all Phase 2 Pilot Project Intersections.
2. **Third Street Light Rail Corridor.** By June 30, 2007, SFMTA shall install APS at no more than thirty-eight (38) Intersections in which SFMTA is already making Intersection modifications as part of the construction of the Third Street Light Rail Project.
3. **BART Intersections.** By December 31, 2007, SFMTA shall install APS at the Intersections serving Bay Area Rapid Transit stations at the corners of 16<sup>th</sup> Street and Mission Street, and 24<sup>th</sup> Street and Mission Street.
4. **Claimants' Priority List Intersections.** By December 31, 2009, and to the extent to which they are not already included

in the Phase 1 Pilot and/or APS installation priorities listed above, SFMTA shall install APS at all Intersections included in Claimants' Priority List.

**5. Public APS Request List Intersections.** Subject to Section IV.B and to the extent to which they are not already included in the Phase 1 Pilot and/or APS installation priorities listed above, SFMTA shall install APS at Intersections for which APS installation has been requested by a member of the public, subject to prioritization through use of the Prioritization Tool.

**6. CalTrans State Route 1 Signal Upgrade Project Intersections.** The Parties acknowledge that CalTrans Intersection projects are planned for 19<sup>th</sup> Avenue during the term of the Agreement. APS installations at Intersections on 19<sup>th</sup> Avenue that are included in Exhibits B or D shall be completed in accordance with the CalTrans construction schedule for those Intersections.

**C. Phase 1 Pilot Project Intersections.** The APS at the Phase 1 Pilot Project Intersections shall conform to the Technical Specifications by June 30, 2007. The six Phase 1 Pilot Project Intersections are in addition to the "at least eighty (80) intersections" described in Section IV.B above.

**D. Technical Specifications.** The City shall maintain current Technical Specifications for APS at all times, and shall conduct all APS installation, operation and maintenance in accordance with the then-current Technical Specifications. The Technical Specifications as of the Effective Date are attached hereto as Exhibit A. The Parties acknowledge that the Technical Specifications may change over time, depending on factors which include but are not limited to changes in legal requirements, advances in APS technology, commercial availability of APS equipment, APS user feedback and the City's experience with APS installation and maintenance. During the term of this Agreement, the City shall give Claimants an opportunity to review and comment on any proposed amendments to the Technical Specifications prior to their adoption by the City. All such amendments shall be consistent with the Americans with Disabilities Act and applicable California disability access laws.

**E. Newly Signalized or Upgraded Intersections.**

Throughout the term of this Agreement, at all newly signalized and upgraded intersections where APS are not yet being installed, SFMTA shall do work to make them ready for eventual APS installation. Such “make ready” work shall mean incorporating the requirements for eventual APS installation into the design of the work to be done in the Intersection consistent with the then-current Technical Specifications. All new poles installed at newly signalized and upgraded intersections will be located, to the extent possible, to make them APS-ready. Conduit will be laid as part of the “make ready” work when necessary to connect a pedestrian signal to a remotely located pole where APS would be installed.

**F. Maintenance of Existing APS Intersections.**

1. MTA shall install and configure all APS to be operational at all times when the associated vehicular signal is in normal operation, except during temporary periods of maintenance or repair. Should an APS malfunction, the City will correct the problem as soon as possible. SFMTA shall maintain existing APS Intersections, giving priority to those APS Intersections that have been the subject of maintenance complaints from the public. SFMTA shall create an intake form for APS complaints that is accessible to people with visual impairments and a tracking mechanism for SFMTA's responses to such complaints. In information regarding its APS installations and policy, the City will provide a phone number and an email address that can be used by the public to report APS malfunctions or maintenance issues and to follow-up regarding SFMTA's response to such complaints.
2. If SFMTA expenditures for troubleshooting and non-routine maintenance of APS installations exceed fifty thousand dollars (\$50,000) in any three month period during the term of this Agreement, then the schedule and deadlines for APS installations at Intersections subject to this Agreement shall be renegotiated by the Parties using the following procedure: If during the term of this Agreement the City wishes to renegotiate the APS installation schedule based on greater-than-anticipated maintenance costs under this Section IV.F.2, the City shall provide written notice to the Claimants detailing the APS maintenance problems and including the City's proposed

change to the APS installation schedule specified in this Agreement. The Parties shall meet and confer in good faith over a period not to exceed forty-five (45) days from the date of the City's notice, during which period the installation schedule set forth in this Agreement shall be suspended. If the Parties cannot agree on a revised APS installation schedule within forty-five (45) days from the City's written notice, then either party may submit the matter for resolution according to the dispute resolution procedures set forth in Section VII.

- G. APS Consultant.** During the term of this Agreement the City shall maintain a contract with an APS Consultant. City will consult Claimants on the selection of an APS Consultant during any APS Consultant selection process, including giving Claimants the opportunity to interview any proposed APS Consultant. The APS Consultant shall provide the following services at SFMTA request: participate in Intersection Assessments, review APS complaints, review the completed installation of APS at any Intersection, make recommendations on potential changes to SFMTA APS policies or Technical Specifications; and report to the Parties on APS issues at Status Meetings described in Section IV.J.1 herein.
- H. Intersection Scoring.** An Intersection Assessment shall be conducted at (i) any Intersection at which APS is to be installed, (ii) any Intersection for which APS has been requested, and (iii) all Intersections within San Francisco that are included in the CalTrans State Route 1 Signal Upgrade project during the term of this Agreement.
- 1. Participation of APS Consultant.** The SFMTA may request the assistance of the APS Consultant for Intersection Assessments.
  - 2. Public Request List Intersection Assessments.** If an Intersection Assessment is being conducted as a result of a request by a member of the public, that person shall be given notice and an opportunity to participate in the assessment. The procedure for requestor participation in Intersection Assessments shall be set out in detail in the SFMTA's Individual APS Request Policy to be developed by SFMTA pursuant to this Agreement.

3. **Prioritization Tool.** The City shall maintain a Prioritization Tool for the purpose of identifying the evaluation factors to be used in Intersection Assessments at all times, and shall conduct all Intersection Assessments in accordance with the guidelines in the then-current Prioritization Tool. The Parties acknowledge that the factors to be considered in an Intersection Assessment may change over time, depending on factors which include but are not limited to changes in legal requirements, advances in APS technology, APS user feedback and City's experience with APS. During the term of this Agreement, the City shall give Claimants an opportunity to review and comment on any proposed amendments to the Prioritization Tool prior to their adoption by City. Disputes regarding substantial changes to the Prioritization Tool will be resolved pursuant to the Dispute Resolution provisions of Section VII of this Agreement.

**I. SFMTA Policies.**

1. **Individual APS Request Policy.** The SFMTA shall draft an Individual APS Request Policy with accessible forms, and procedures for members of the public to request APS at particular Intersections which shall, at a minimum include:
  - a. A mechanism for tracking APS requests and SFMTA responses, including name of requestor, date of request, unique request tracking number, identification of intersection for which APS is requested and the Intersection Score.
  - b. Standard information to be effectively communicated to APS requestors within ten (10) business days of the receipt of the request, including but not limited to a unique tracking number for the request status, the requestor's right to participate in the Intersection Assessment on the date and time that it is scheduled. SFMTA will accommodate reasonable requests to reschedule Intersection Assessments to accommodate requestors.
  - c. A process for providing a preliminary Intersection Score to the requestor within a specified time period of the request and a procedure for the requestor to contest the score.

d. At the time of providing a requestor the preliminary Intersection Score, SFMTA shall also effectively communicate to the requestor the relative priority of the requested Intersection as compared to all other Intersections then scheduled for APS installation, any work being planned by SFMTA at that intersection, and, given then current APS installation priorities, whether APS are likely to be installed at that Intersection within the succeeding three (3) years. Such notice shall also provide the requestor with the name and phone number of a contact person at SFMTA to answer questions about the request.

2. **APS Installation Policy.** The SFMTA shall draft a policy that identifies SFMTA's ongoing policies and procedures regarding APS consistent with this Agreement.
3. **Claimant Review of SFMTA Policies.** Within sixty (60) calendar days of the Effective Date of this Agreement, SFMTA shall provide Claimants with a draft Individual APS Request Policy and a draft APS Installation Policy. Within ten (10) business days of receipt of a draft policy, Claimants shall provide written comments regarding the draft policy. If the Parties are in agreement regarding the content of a draft policy, the policy shall be presented as soon as possible to the SFMTA Board for its consideration, with a request for its approval and, if approved by the SFMTA Board, shall be adopted and implemented by the SFMTA. Consistent with its obligations as a public agency, the SFMTA reserves the right to present its APS policies to any public body for public review and comment on the contents of APS policies, and to adjust APS policies as the SFMTA deems necessary to respond to public need, as long as the policies remain consistent with the Americans with Disabilities Act and applicable California disability access laws.

**J. APS Planning.**

1. **Status Meetings.** The Parties shall meet at least twice per calendar year during the term of this Agreement to discuss the status of installations, status of the Public Request List, complaints related to APS, APS user community feedback, potential funding sources, the status of any SFMTA funding

requests for APS, Technical Specifications, SFMTA APS policies, plans for future APS installations, and any other APS-related issue that a party would like to discuss. At least ten (10) business days prior to each status meeting, each party shall submit to the other in writing any changes proposed to SFMTA APS policies or APS Technical Specifications. Claimants may request that other City personnel, CalTrans personnel, or vendor representatives with information about any of the issues to be discussed be present at the Status Meeting, and the City will make good faith efforts to arrange for the participation of those persons or entities.

2. **Proposition K Prioritization Program Renewal.** SFMTA shall provide a meaningful opportunity to Claimants to participate in the development of the SFMTA's funding request for the upcoming Proposition K Prioritization Program of the San Francisco County Transportation Authority.
3. **Dissemination of Public Information.** The Parties will cooperate to provide APS information to the public and mechanisms for public feedback about APS in San Francisco, including but not limited to posting APS information on the SFMTA website, including all Intersections where APS are installed; the Individual APS Request Policy; procedures for submitting requests for APS maintenance or APS complaints; information on APS operation and functionality and the City's APS Installation Policy. SFMTA shall also request such information to be posted on other appropriate City websites. The City shall make all information listed in this Section IV.J.3 available to members of the public with visual impairments in alternative formats upon request.

**K. Reports.**

SFMTA shall provide an APS report to Claimants ten (10) calendar days in advance of any Status Meetings held pursuant to Section IV.J.1 of this Agreement. A final report shall be submitted to Claimants within thirty (30) days of the termination of this Agreement. The APS reports shall include the following information:

1. APS installations since the last report;

2. APS maintenance completed during the reporting period;
3. Issues or unforeseen events, if any, the SFMTA has encountered in implementing this Agreement and how the SFMTA plans to address or respond to the issues or unforeseen events;
4. Any complaints received regarding APS during the previous reporting period;
5. The SFMTA's experiences with application of the Technical Specifications during the reporting period and any required departures from the Technical Specifications during the reporting period;
6. APS installations and APS maintenance planned for the upcoming reporting period;
7. A detailed cost accounting for APS expenditures, including but not limited to the cost of each installation and the cost of maintenance per APS intersection;
8. Funding requested by SFMTA and the status of such requests, funding opportunities anticipated for the upcoming reporting period, other City agencies, departments and personnel with whom SFMTA worked regarding APS funding during the reporting period, and planned contacts for the upcoming reporting period;
9. Status of CalTrans projects in the City and efforts to obtain funding from CalTrans for APS Installations.

## **V. WHAT CLAIMANTS WILL DO**

Claimants agree to take or cause to be taken the following actions during the term of this Agreement:

- A. Support SFMTA efforts to obtain additional APS funding from such other City departments, agencies, boards, commissions, and councils, including but not limited to the Office of the Mayor and from the San Francisco Board of Supervisors;

- B.** Participate in Status Meetings as described in Section IV.J.1 and seek community input regarding issues to be raised in such meetings;
- C.** Review reports provided pursuant to Section IV.K and seek community input on issues identified therein;
- D.** Participate in the development of SFMTA's funding request for the upcoming Proposition K Prioritization Program of the San Francisco County Transportation Authority pursuant to Section IV.J.2 herein;
- E.** Work with SFMTA to disseminate APS information to the public. As part of that program, Claimant San Francisco LightHouse will provide information to members of the blind community about the City's APS program and will conduct a reasonable number of demonstrations of installed APS for the blind community, the exact number of which to be solely determined by the LightHouse. Subject to the availability of demonstration units on loan from the manufacturer, the SFMTA will loan the LightHouse one APS for training purposes for at least the first twelve months following the Effective Date.

## **VI. TERM OF AGREEMENT**

This Agreement shall remain in effect from the Effective Date until June 30, 2010.

## **VII. DISPUTE RESOLUTION**

Except as otherwise set forth herein, all disputes concerning compliance with this Agreement shall be resolved as follows:

### **A. Meet and Confer.**

- 1. Notice of Potential Dispute.** If a party (the "Initiating Party") believes that the other party (the "Responding Party") has not complied with any provision of this Agreement, the Initiating Party shall provide the Responding Party with Notice of potential dispute containing the following information: (i) the alleged act of non-compliance; (ii) a reference to the specific provision(s) of the Settlement Agreement that the Initiating Party claims has been violated; (iii) a statement of the remedial action sought by the Initiating Party; and (iv) a brief statement of the specific facts, circumstances and legal argument supporting the position of the Initiating Party.

2. **Response.** Within thirty (30) calendar days of receipt of a Notice as described above, the Responding Party shall respond to the Initiating Party in writing.
3. Within ten (10) business days of receipt of a Response as described above, the Parties will meet and confer and negotiate in good faith for at least thirty (30) days in an attempt to resolve their dispute.

**B. Mediation.**

1. If the Parties cannot resolve the disputed issue through the meet and confer process described above, the Parties agree to use a mutually acceptable mediator or mediation service to mediate the dispute. The Parties will agree on a mediator or mediation service within thirty (30) days following the end of the meet and confer period set forth in Section VII.A, and set a date for mediation to take place promptly.
2. Should mediation prove unsuccessful, either party may file an action to enforce this Agreement.
3. The Parties agree not to file any judicial action to enforce this Agreement until this dispute resolution process has been completed and then only if the alleged violations or noncompliance with this Agreement have not been corrected as a result of the dispute resolution effort by the Parties.

**VIII. NEGOTIATIONS REGARDING FUTURE AGREEMENT**

- A. By no later than December 21, 2009, the Parties shall begin negotiations in good faith to enter into a further agreement regarding the issues set forth in Section VIII.B herein. Such negotiations shall continue for a period not to exceed ninety (90) days unless the Parties mutually agree to extend the period further (“Future Negotiations”).
- B. During the Future Negotiations, the Parties shall negotiate in good faith regarding a further plan for installing APS at Intersections in the City, and extension and/or modification of the programs, policies, and procedures implemented as a result of this Settlement Agreement.

**IX. RELEASE AND COVENANT NOT TO SUE**

**A. Release.**

In return for the consideration provided for in this Agreement, upon the Effective Date of this Agreement, Claimants release the City and its officers, boards, commissions, directors, parents, subsidiaries, affiliates, successors, insurers, employees, attorneys, and agents (“Released Parties”) from any and all claims, liabilities, obligations, demands, and actions, that were brought or could have been brought against the Released Parties regarding legally required access to information provided by pedestrian signals at Intersections at which APS are installed pursuant to Section IV of the Agreement (hereinafter referred to as “Claims”), provided the APS at those Intersections continue to be maintained in accordance with Section IV.F.2 of the Agreement. This Release encompasses, without limitation, any Claims arising directly or indirectly out of or otherwise connected with: (a) the Americans with Disabilities Act; and (b) any other federal, state, or local statute or regulation involving the rights of persons with disabilities.

**B. Covenant Not to Sue.**

Except as required by due legal process not initiated directly or indirectly by any of them, and for the time period set forth in Section IX.C. herein, Claimants expressly covenant that none of them will file, initiate, commence, institute, maintain or prosecute any action at law, suit in equity or other proceeding arising out of, or in any way connected with claims, cross-claims or counterclaims, liens, demands, rights, causes of action, debts, obligations, contracts, expenses, damages and liabilities of any kind whatsoever, whether liquidated or unliquidated, whether at this time suspected, known or unknown, and whether anticipated or unanticipated, that Claimants have had in the past, now have, or may have in the future against the Released Parties for any act or omission occurring through and including the term of this Covenant Not to Sue, as set forth in Section IX.C. herein, for any and all information provided by pedestrian signals in the City. This Covenant Not to Sue does not extend to any claim based on any alleged failure by the City to perform any of its obligations under the Settlement Agreement, which shall be handled pursuant to the terms of Section VII, herein.

**C. Term of the Covenant Not to Sue.**

The covenant not to sue set forth in Section IX.B. herein shall extend from the Effective Date until the later date of either June 30, 2010, the expiration of the Future Negotiations period described in Section VIII, above (should the Claimants elect to engage in such Future Negotiations), or any agreed upon extension thereto. Should the Parties execute a further Settlement Agreement as a result of the Future Negotiations, that Agreement, or an associated Addendum, shall include an appropriate release of Claimants' Claims.

**X. Publicity.**

Within fifteen (15) calendar days of the Effective Date of the Agreement, the Parties shall hold a joint press conference and issue a joint press release to announce the City's APS program.

**XI. MONETARY RELIEF**

**A. Attorney's Fees, Expenses and Costs from Inception to and Including April 10, 2007.**

The SFMTA will make two payments to Claimants' Counsel which together shall be payment in full for reasonable attorney's fees, costs, and expenses, including consultant and expert witness fees and costs, for Claimants' Counsel's time and expenses in connection with this matter through and including April 10, 2007. The first payment shall be due promptly following July 1, 2007 and shall be in the amount of one hundred eighty-five thousand five hundred twenty dollars and ninety-seven cents (\$185,520.97). The second payment shall be in the amount of one hundred seventy-five thousand (\$175,000.00) and shall be due promptly following July 1, 2008. Each payment shall be made payable to Goldstein, Demchak, Baller, Borgen & Dardarian and to the Law Office of Elaine B. Feingold, to be divided as they instruct, and to be delivered to Linda M. Dardarian, Goldstein, Demchak, Baller, Borgen and Dardarian, at 300 Lakeside Drive, Suite 1000, Oakland, California 94612.

**B. Additional Payment.**

Promptly following July 1, 2007, the SFMTA will deliver to Linda M. Dardarian, Goldstein, Demchak, Baller, Borgen and Dardarian, at 300 Lakeside Drive, Suite 1000, Oakland, California 94612, a check in the amount of thirty thousand dollars (\$30,000.00) payable to the "Goldstein, Demchak, Baller, Borgen and Dardarian Client Trust

Account.” This amount shall be payment in full and final settlement of the Claims of Claimants that are being released in Section IX, above.

**C. Attorney’s Fees, Expenses, and Costs, Including Expert Fees, Incurred between April 11, 2007 and the Expiration Date of the Agreement.**

**1. Compensable Activities.**

Subject to the following terms, the City shall pay Claimants’ Counsel reasonable attorney’s fees, expenses, and costs, including expert fees, incurred between April 11, 2007 and the expiration date of the Agreement, for performing all work reasonably necessary to monitor, implement and administer the Settlement Agreement, including but not limited to reviewing reports, participating in semi-annual meetings, reviewing and commenting on SFMTA policies, and participating in and memorializing any agreement that may result from the Future Negotiations set forth in Section VIII, above.

**2. Procedure.**

For each calendar quarter during the term of this Agreement, Claimants’ Counsel shall submit to the City a statement of reasonable attorney’s fees, expenses and costs incurred during the previous quarter. Promptly following July 1, 2009 and after the Parties have resolved any dispute about the amount of such fees and costs, SFMTA shall pay to Claimants’ Counsel all reasonable attorney’s fees and costs incurred and during calendar years 2007 and 2008. For each subsequent calendar year during the term of this Agreement, SFMTA shall pay for all reasonable attorney’s fees and costs promptly following Claimants’ Counsel’s submittal of the final statement of fees and costs for that calendar year and after the Parties have resolved any dispute about the amount of such fees and costs. Claimants’ Counsels’ quarterly statements of fees incurred shall be supported by a description of services by date and by biller and, subject to the provisions of Subsection XI.C.2, below, shall not exceed the following total amounts per period (“Period Caps”): \$30,000 for April 11 to December 31, 2007; \$20,000 for January 1, 2008 to December 31, 2008; \$20,000 for January

1, 2009 to December 31, 2009; and \$25,000 for January 1, 2010 to December 31, 2010. Any objections or disputes regarding the statement shall be handled pursuant to the procedure set forth in Section VII, above. Work performed pursuant to Section VII shall not be subject to the Period Caps set forth herein but shall instead be subject to Section XI.D, below.

**D. Attorney's Fees, Expenses and Costs Incurred Pursuant to Section VII.**

**1. Standard for Payment of Attorney's Fees, Expenses and Costs.**

If any of the Parties files a Notice of Potential Dispute, initiates renegotiation of the APS installation schedule as set forth in Section IV.F, above, or submits any other issue for Dispute Resolution pursuant to Section VII of the Settlement Agreement, reasonable attorney's fees, litigation expenses, expert witness fees, expenses and other costs, including mediator fees, shall be recovered by Claimants if they are prevailing parties (i.e., succeed on any significant issue or achieve the benefit sought in the dispute).

**2. Procedure.**

Once the Parties have resolved the underlying dispute, they shall meet and confer regarding, or raise during any applicable mediation, the payment of Claimants' reasonable attorney's fees, expenses and costs incurred in resolving the underlying dispute. If the payment of attorney's fees, expenses and costs is not resolved within thirty (30) days of the initial meet and confer on this issue, or during the applicable mediation of the underlying dispute, either party may submit the fee dispute to binding arbitration. The arbitration hearing shall be conducted by an arbitrator affiliated with JAMS, in accordance with the JAMS Streamlined Arbitration Rules & Procedures. However, those Rules will be modified as necessary to ensure that the hearing is held within thirty (30) days of the submission to arbitration, and that a written decision on the matter is rendered within sixty (60) days of the first hearing date.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by themselves or their duly authorized representatives on the dates set forth opposite their signatures.

**CITY AND COUNTY OF SAN FRANCISCO, MUNICIPAL TRANSPORTATION AGENCY:**

**APPROVED:**

\_\_\_\_\_  
Nathaniel P. Ford, Sr.  
Executive Director/CEO  
Municipal Transportation Agency

**Approved as to Form:**

**DENNIS J. HERRERA**  
City Attorney

By: \_\_\_\_\_  
Christiane Hayashi  
Deputy City Attorney

MTAB Resolution Number: \_\_\_\_\_  
Date: \_\_\_\_\_  
Attest: \_\_\_\_\_  
Roberta Boomer  
Secretary,  
Municipal Transportation Agency Board

**CLAIMANTS:**

**CALIFORNIA COUNCIL OF THE BLIND**

\_\_\_\_\_  
By: Jeff Thom, President

**LIGHTHOUSE FOR THE BLIND AND VISUALLY IMPAIRED**

\_\_\_\_\_  
By: Anita Aaron, Executive Director/CEO

**INDEPENDENT LIVING RESOURCE CENTER SAN FRANCISCO**

\_\_\_\_\_  
By: Herb Levine, Executive Director

**DAMIEN PICKERING**

\_\_\_\_\_  
By: Damien Pickering

**CLAIMANTS' COUNSEL:**

**GOLDSTEIN, DEMCHAK, BALLER, BORGEN & DARDARIAN**

\_\_\_\_\_  
By: Linda M. Dardarian

**LAW OFFICE OF ELAINE B. FEINGOLD**

\_\_\_\_\_  
By: Lainey Feingold

## INDEX TO EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Technical Specifications
B	Claimants' Priority List
C	Prioritization Tool
D	Public APS Request List

**EXHIBIT A**  
**TECHNICAL SPECIFICATIONS**

1. **Definitions.**

1.1. Accessible Pedestrian Signal, or APS means, for the purpose of this Agreement, a Pushbutton-Integrated device that communicates information about Pedestrian Timing in a non-visual manner, such as audible tones, speech messages, and

vibrating surfaces, and has the following features to the extent that they are available from an APS vendor: (1) a Pushbutton Locator Tone; (2) a pushbutton actuation tone and light in response to the button push to indicate that the button has been pressed; (3) an Audible Walk Indication; (4) a Vibrotactile Walk Indication; (5) automatic volume adjustment in response to ambient sound; (6) a tactile arrow; (7) a Pushbutton Information Message; (8) street name in Braille and Large Print; and (9) a Pushbutton with a 2” minimum diameter.

1.3. Audible Beaconing means the use of a permanently fixed sound source to provide directional orientation and crossing alignment information to pedestrians with visual impairments or blindness.

1.4. Audible Walk Indication means an audible method of indicating the Walk Interval, either through a Rapid Tick or Speech Message. When a Speech Message is the Audible Walk Indication, it shall follow the following model: “[Street name]. Walk sign is on to cross [Street Name].”

1.5. Control Surface means the vertical surface on which the pushbutton is located.

1.6. Intersection means a location with one or more pedestrian crosswalks, including mid-block crossings, and with one or more Visual Pedestrian Signals associated with the crosswalks.

1.7. Pedestrian Change Interval means the portion of the Pedestrian Timing during which the flashing upraised hand, symbolizing “Don’t Walk,” is displayed, signaling that pedestrians should finish crossing the street.

1.8. Pedestrian Timing means the cycle of the time allotted in the signal cycle to allow a pedestrian to cross the street. Pedestrian Timing consists of: (i) the Walk Interval and (ii) the Pedestrian Change Interval.

1.9. Pushbutton Information Message means the information delivered audibly when the pushbutton is pressed and held for one second or more during the flashing or steady “Don’t Walk” indicator. The Pushbutton Information Message shall follow the model “Wait to cross [Street name] at [cross street name].” Information on unusual intersection signalization or geometry may be provided following the crosswalk identification message. No other types of information may be provided.

1.10. Pushbutton-Integrated Accessible Pedestrian Signal means an Accessible Pedestrian Signal in which all audible and vibrotactile information is provided from the pushbutton housing. The Pushbutton-Integrated APS may also activate an overhead speaker where Audible Beacons is provided, as set forth in section 2.6 below.

1.11. Pushbutton Locator Tone means a repeating sound that informs approaching pedestrians of the APS. Pushbutton Locator Tones shall be easily locatable, shall have duration of 0.15 seconds or less, and shall repeat at one-second intervals while the visual flashing and steady “Don’t Walk” message appears on the Visual Pedestrian Signal.

1.12. Rapid Tick means a ticking sound that repeats at the rate of ten ticks per second.

1.13. Speech Message means a spoken instruction that provides information to the pedestrian with visual impairments or blindness about the street crossing location and Walk Interval. When a Speech Message is the Audible Walk Indication, it shall follow the following model: “[Street Name]. Walk sign is on to cross [Street Name].”

1.14. Vibrotactile Walk Indication means a tactile arrow that contrasts with the background, is oriented in the direction of travel on the associated crosswalk, and vibrates throughout the Walk Interval, indicating that the Walk Interval is on.

1.15. Visual Pedestrian Signal means a signal that provides information about Pedestrian Timing in a visual manner.

1.16. Walk Indication means a method of informing the pedestrian that the Walk Interval has begun.

1.17. Walk Interval means the portion of the Pedestrian Timing during which the walking person, symbolizing “Walk,” is displayed, signaling that pedestrians are permitted to start to cross the street.

## 2. **Installation and Operational Requirements.**

### 2.1. Walk Indication and Pushbutton Information Message.

2.1.1. When Pushbutton-Integrated APS serving separate crosswalks are installed on two separate poles on a single street corner or other locations with pedestrian crosswalks separated by at least 10 feet at the same crossing, the Audible Walk Indication shall be a Rapid Tick.

2.1.2. When Pushbutton-Integrated APS serving separate crosswalks are installed on the same pole, the Audible Walk Indication shall be a Speech Message.

2.1.3. Where the Visual Pedestrian Signal is a fixed time signal (i.e., does not require pedestrian activation), the Accessible Pedestrian Signal shall also be a fixed timed signal.

2.1.4. Except as provided in sections 2.1.5 and 2.1.6 herein, the Audible and Vibrotactile Walk Indications shall be repeated for the entire duration of the Walk Interval.

2.1.5. This paragraph applies only to a situation in which a pedestrian signal (i) is used to assist pedestrians crossing a minor street that intersects a major street; (ii) stays in a rest-in-walk status; and (iii) only changes to “Don’t Walk” when a pedestrian pushes the button to cross the major street, or a vehicle activates the signal to cross the major street. In such situations, and where technology provided by the City’s APS vendors provide the option, when the duration of the rest-in-walk status is longer than 7 seconds, the Audible Walk Indication will terminate after 7 seconds but the Vibrotactile Walk Indication will stay on throughout the rest-in-walk status.

2.1.6. Alternatively, if technology provided by the City’s APS vendors permits, when the duration of the rest-in-walk status is longer than 7 seconds, the Audible and Vibrotactile Walk Indications will terminate after 7 seconds. These non-visual Walk Indications will be re-activated during the rest-in-walk status whenever a pedestrian pushes the button to cross the minor street and there is sufficient time remaining in the pedestrian phase for the Pedestrian Change Interval.

## 2.2. Volume Settings.

2.2.1. The Pushbutton Locator Tone and Walk Indication emitting from the Pushbutton Housing shall be audible, under varying conditions of ambient sound, 6 feet to 12 feet from the pushbutton, or to the building line of the nearest building, whichever is less. When the pushbutton is pressed and held for one second or more during the flashing or steady “Don’t Walk” phase, the volume of the Walk Indicator and Locator Tone will be increased for a maximum of two cycles. Under such circumstances, the volume of the Locator Tone shall be increased during the Pedestrian Change Interval only.

2.2.2. Volume shall be increased for one, or if available from the vendor, two Pedestrian Timing cycles following a button press of one second or more.

2.3. APS Control Surface and Pole Placement.

2.3.1. Where two or more APS serving two or more crosswalks are installed on a single street corner or other pedestrian crossing location, they shall be installed such that the APS Control Surfaces and associated speakers are separated by a horizontal distance of at least 10 feet unless it is structurally impracticable or technically infeasible to do so. If the City believes that the APS Control Surfaces and associated speakers cannot be placed ten feet apart because of structural impracticability or technical infeasibility, it shall provide Claimants with the factual basis for the City's position in writing, including the identity of the intersection where the poles are located. The City shall also inform Claimants whether the APS will be installed on a single pole or on two poles separated by less than 10 feet (and, if the latter, the distance between the two APS Control Surfaces and the distance between the associated speakers). The City shall also inform Claimants of the means by which it will ensure that these APS provide unambiguous information regarding which crosswalk is in the Walk Interval, including the Speech Message(s) to be used, if any. The APS pushbutton shall be located approximately 42 inches above the adjacent walking surface.

2.3.2. All APS Control Surfaces shall be placed so that the Control Surface is within five feet of the extended crosswalk lines, and not more than 10 feet from the edge of the curb unless the curb ramp is longer than 10 feet. The Control Surface of the Accessible Pedestrian Signals shall be oriented to be parallel to the crosswalk to be used. In addition, the poles on which Accessible Pedestrian Signals are placed in new or altered Intersections where new poles are installed, where feasible shall be located 10 inches or less to a level, firm, stable, slip-resistant, all-weather surface no less than 36 inches by 48 inches and on an accessible route to the curb ramp. (All dimensions are horizontally measured.)

2.4. Number of Accessible Pedestrian Signals Per Intersection.

If one crosswalk at an Intersection is to be equipped with an Accessible Pedestrian Signal, each crosswalk in that intersection that has a Visual Pedestrian Signal shall be equipped with Accessible Pedestrian Signals for each Visual Pedestrian Signal associated with the crosswalk.

2.4.1. Where transit stops are located along a median or traffic island, Pushbutton Integrated APS shall be installed in the median or traffic island where an existing pedestrian pushbutton is installed.

2.5. Hours of Operation of Accessible Pedestrian Signals.

2.5.1. If the City receives complaints from the community regarding noise levels emitting from an Accessible Pedestrian Signal at night, the City shall evaluate the APS and make any required adjustments to ensure the APS' volume setting complies with Section 2.2, above. If complaints continue after such adjustments are made, and the signal is a fixed-time signal, the City may elect to change the signal to a pedestrian actuated signal. On reasonable request from Claimants, the City shall inform Claimants of any Intersections that have been the subject of noise complaints.

2.5.2. The APS shall be deactivated when the associated vehicular signal is in flashing mode.

2.6. Audible Beacons.

The parties recognize that some, but not all Intersections may be appropriate for Audible Beacons. The City will consider the use of Audible Beacons when the function is included in commercially available APS equipment.

2.7. Text Requirements.

Raised characters, text, symbols, pictorial symbol signs and Braille where provided shall conform to the requirements of the California Building Code, Section 1117B.5.2, 1117B.5.3, 1117B.5.4, 1117B.5.5, 1117B.5.6,. Color coded textured horizontal bands shall be provided in accordance with 1117B.5.9.