File No. 120860

Committee Item No. 3
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee **Date** 09/19/2012

Board of Supervisors Meeting **Date** _____

Cmte	Board	
☐	☐	Motion
☒	☐	Resolution
☐	☐	Ordinance
☐	☐	Legislative Digest
☒	☐	Budget and Legislative Analyst Report
☐	☐	Legislative Analyst Report
☐	☐	Youth Commission Report
☐	☐	Introduction Form (for hearings)
☒	☐	Department/Agency Cover Letter and/or Report
☐	☐	MOU
☐	☐	Grant Information Form
☐	☐	Grant Budget
☐	☐	Subcontract Budget
☒	☐	Contract/Agreement
☒	☐	Form 126 – Ethics Commission
☐	☐	Award Letter
☐	☐	Application
☐	☐	Public Correspondence

OTHER **(Use back side if additional space is needed)**

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Completed by: Victor Young **Date** September 14, 2012
Completed by: Victor Young **Date** _____

FILE NO. 120860 RESOLUTION NO.

[Contract Amendment - En Pointe Technology Sales, Inc. - $54,150,000]

Resolution authorizing the Office of Contract Administration to enter into the Fifth Amendment between the City and En Pointe Technology Sales, Inc. (part of the Technology Store procurement vehicle), in which the amendment shall increase the contract limit from $38,490,000 to $54,150,000, exercise the second of two options to extend the contract by one year through December 31, 2013, and update standard contractual clauses.

WHEREAS, The Office of Contract Administration, by competitive bidding, developed the Technology Store procurement method for the purchase of products and services related to Information Technology; and

WHEREAS, En Pointe Technology Sales, Inc. is one of the three products vendors who are part of the Technology Store; and

WHEREAS, The original contract with En Pointe Technology Sales, Inc. dated January 1, 2009 has a term of three years through December 31, 2011 with options to extend the term through December 31, 2013, and has an original contract limit of $24,000,000; and

WHEREAS, The Board of Supervisors approved the original contract on December 9, 2008 by Resolution #508-08; and

WHEREAS, The Board of Supervisors approved the First Amendment to the contract on June 7, 2011 by Resolution #233-11 to increase the contract limit from $24,000,000 to $28,000,000; and

WHEREAS, The Director of the Office of Contract Administration and the Purchaser approved the Second Amendment to the contract on November 21, 2011 to

increase the contract limit from $28,000,000 to $28,475,000, to exercise the first of two options to extend the contract by one year to December 31, 2012, and to update standard contractual clauses; and

WHEREAS, The Board of Supervisors approved the Third Amendment to the contract on January 10, 2012 by Resolution #5-12 to increase the contract limit from $28,475,000 to $38,000,000; and

WHEREAS, The Director of the Office of Contract Administration and the Purchaser approved the Fourth Amendment to the contract on June 28, 2012 to increase the contract limit from $38,000,000 to $38,490,000; and

WHEREAS, The Office of Contract Administration estimates that the money projected to be spent with En Pointe Technologies Sales Inc. could reach the contract's amended limit in the reasonably near future; and

WHEREAS, Charter section 9.118, (b) "Contract and Lease Limitations," requires the Board of Supervisors to approve any contract estimated to exceed $10 million in expenditures or amendments exceeding $500,000 to such contracts; now, therefore, be it

RESOLVED, That the Board of Supervisors authorizes the Director of the Office of Contract Administration and the Purchaser to enter into the Fifth Amendment to the contract with En Pointe Technologies Sales, Inc. in substantially the form attached to increase the contract limit from $38,490,000 to $54,150,000, to exercise the second of two options to extend the contract by one year through December 31, 2013, and to update standard contractual clauses.

Items 3, 4, and 5 Files 12-0860, 12-0861, and 12-0862	Department: Office of Contract Administration (OCA)

EXECUTIVE SUMMARY

Legislative Objectives

File 12-0860: Resolution authorizing the Office of Contract Administration (OCA) to enter into the Fifth Amendment between the City and En Pointe Technology Sales, Inc. (En Pointe), to (a) increase the agreement limit from $38,490,000 to $54,150,000, (b) exercise the second of two options to extend the agreement by one year through December 31, 2013, and (c) update standard contractual clauses.

File 12-0861: Resolution authorizing OCA to enter into the Fifth Amendment between the City and Xtech to (a) increase the agreement limit from $51,490,000 to $67,890,000, (b) exercise the second of two options to extend the agreement by one year through December 31, 2013, and (c) update standard contractual clauses.

File 12-0862: Resolution authorizing OCA to enter into the Third Amendment between the City and CCT Technologies, Inc., dba ComputerLand of Silicon Valley (ComputerLand), to (a) increase the agreement limit from $24,490,000 to $34,460,000, (b) exercise the second of two options to extend the agreement by one year through December 31, 2013, and (c) update standard contractual clauses.

Key Points

- On December 9, 2008, subsequent to a competitive request for proposals (RFP) process, the Board of Supervisors approved the award of $72,000,000 for three technology product purchase agreements (File 0814-16), each in an equal amount not-to-exceed $24,000,000, with the firms En Pointe, Xtech, and ComputerLand. The Agreements were for terms of three years, from January 1, 2009 through December 31, 2011, with options to extend the terms by two additional years, or through December 31, 2013. Each of the agreements has since been amended on more than one occasion to exercise the first option to extend, and to increase the agreements' not-to-exceed limit based on actual City departmental spending on technology products.
- Based on actual expenditures through July 31, 2012 and projections based on average monthly expenditure rates, the agreements with En Pointe and ComputerLand will exceed their existing limits in September 2012. The agreement with Xtech is projected to reach its limit in December 2012.
- The proposed resolutions would authorize OCA to exercise the second of the two options for each of the agreements, extending each agreement through December 31, 2013. OCA intends to conduct a solicitation process in 2013 and award new agreements by the end of the 2013 to replace these expiring agreements.

Fiscal Impacts

- The three proposed resolutions would authorize OCA to increase the not-to-exceed limits for three existing technology product purchase agreements: (1) increasing the En Pointe agreement by $15,660,000, from $38,490,000 to $54,150,000; (2) increasing the Xtech agreement by $16,400,000, from $51,490,000 to $67,890,000; and (3) increasing the ComputerLand agreement by $9,970,000, from $24,490,000 to $34,460,000.
- All expenditures for technology product purchases are subject to separate appropriation approval for each City department by the Board of Supervisors, through the Annual Appropriation Ordinance or through supplemental appropriation ordinances.

Recommendations

- Approve the three proposed resolutions.

MANDATE STATEMENT/ BACKGROUND

Mandate Statement

In accordance with Section 9.118(b) of the City's Charter, any contract or agreement that has a term in excess of ten years or exceeds $10,000,000 in expenditures or the modification of such agreement exceeds $500,000, is subject to Board of Supervisors approval.

Background

The Office of Contract Administration (OCA) administers a number of agreements with various private firms for as-needed technology products for all City Departments, through the City's Technology Store. City departments requiring technology products are required to purchase such items through the City's Technology Store's vendors, who were previously pre-qualified under a competitive Request for Proposals (RFP) process, without undergoing another separate independent competitive process, with some exceptions made for products which are only sold directly through specific manufacturers, federally funded purchases, or specific projects which are large enough to require a separate RFP process. In addition, for purchases in excess of $100,000, City departments are required to request bids from no fewer than three pre-qualified vendors from the City's Technology Store, and then purchase such technology products and/or services from the lowest bidding vendor.

Original Agreements and Amendments

On April 8, 2008, OCA issued a RFP to pre-qualify various vendors for the City's Technology Store. On December 9, 2008, subsequent to this competitive RFP process, the Board of Supervisors approved the award of $72,000,000 for three technology product purchase agreements (File 0814-16), each in an equal amount not-to-exceed $24,000,000, with En Pointe, Xtech, and ComputerLand. The Agreements were for terms of three years, from January 1, 2009 through December 31, 2011, with options to extend the terms by two additional years, or through December 31, 2013.

Since their adoption, each of the three technology product purchase agreements has been amended. A summary of the past amendments to the subject purchasing agreements is shown in Table 1, below.

Based on actual spending through July 31, 2012, and average spending over the lifetime of the three agreements, shown in the Attachment to this report, the agreements with En Pointe and ComputerLand are presently at or near their not-to-exceed limits. The agreement with Xtech is estimated to reach its not-to-exceed limit in December 2012.

Table 1. Amendment History for Three Subject Purchasing Agreements

En Pointe Technologies

Amendment No.	File No.	Adoption/ Amendment Date	Agreement End-Date	Agreement Increase Amount	Revised Not-to-Exceed Amount
Original Agreement	08-1416	12/09/2008	12/31/2011	N/A	$24,000,000
1	11-0487	6/07/2011	12/31/2011	$4,000,000	$28,000,000
2	N/A*	11/21/2011	12/31/2012	$475,000	$28,475,000
3	11-1311	1/10/2012	12/31/2012	$9,525,000	$38,000,000
4	N/A*	6/28/2012	12/31/2012	$490,000	$38,490,000
5 (proposed)	*12-0860*	-	*12/31/2013*	*$15,660,000*	*$54,150,000*

XTech

Amendment No.	File No.	Adoption/ Amendment Date	Agreement End-Date	Agreement Increase Amount	Revised Not-to-Exceed Amount
Original Agreement	08-1416	12/9/2008	12/31/2011	N/A	$24,000,000
1	10-0894	9/28/2010	12/31/2011	$17,000,000	$41,000,000
2	N/A*	11/21/2011	12/31/2012	$0	$41,000,000
3	11-1309	1/10/2012	12/31/2012	$10,000,000	$51,000,000
4	N/A*	6/28/2012	12/31/2012	$490,000	$51,490,000
5 (proposed)	*12-0861*	-	*12/31/2013*	*$16,400,000*	*$67,890,000*

ComputerLand

Amendment No.	File No.	Adoption/ Amendment Date	Agreement End-Date	Agreement Increase Amount	Revised Not-to-Exceed Amount
Original Agreement	08-1416	12/09/2008	12/31/2011	N/A	$24,000,000
1	N/A*	12/14/2011	12/31/2012	$0	$24,000,000
2	N/A*	6/28/2012	12/31/2012	$490,000	$24,490,000
3 (proposed)	*12-0862*	-	*12/31/2013*	*$9,970,000*	*$34,460,000*

* Amendment was executed by the OCA Director without Board of Supervisors approval.

DETAILS OF PROPOSED LEGISLATION

File 12-0860: Resolution authorizing the Office of Contract Administration (OCA) to enter into the Fifth Amendment between the City and En Pointe Technology Sales, Inc. (En Pointe), to (a) increase the agreement limit from $38,490,000 to $54,150,000, (b) exercise the second of two options to extend the agreement by one year through December 31, 2013, and (c) update standard contractual clauses.

File 12-0861: Resolution authorizing OCA to enter into the Fifth Amendment between the City and Xtech to (a) increase the agreement limit from $51,490,000 to $67,890,000, (b) exercise the second of two options to extend the agreement by one year through December 31, 2013, and (c) update standard contractual clauses.

File 12-0862: Resolution authorizing OCA to enter into the Third Amendment between the City and CCT Technologies, Inc., dba ComputerLand of Silicon Valley (ComputerLand), to (a) increase the agreement limit from $24,490,000 to $34,460,000, (b) exercise the second of two options to extend the agreement by one year through December 31, 2013, and (c) update standard contractual clauses.

If approved, each of these agreements would expire on December 31, 2013 and would not have additional options for renewal. According to Mr. Bill Jones of OCA Purchasing, OCA intends to conduct a solicitation process in 2013 and award new agreements by the end of the 2013 to replace these three expiring technology product agreements.

FISCAL IMPACTS

The three proposed resolutions would authorize the Office of Contract Administration (OCA) to execute the amendments to three existing technology product purchase agreements, as summarized in Table 2 below.

Table 2. Summary of Not-to-Exceed Amount Increases

File No.	Vendor	Existing Not-to-Exceed Amount	Proposed Not-to-Exceed Increase	Revised Not-to-Exceed Amount
12-0860	En Pointe Technologies	$38,490,000	$15,660,000	$54,150,000
12-0861	Xtech	$51,490,000	$16,400,000	$67,890,000
12-0862	ComputerLand	$24,490,000	$9,970,000	$34,460,000

All expenditures for technology product purchases are subject to separate appropriation approval for each City department by the Board of Supervisors, through the Annual Appropriation Ordinance or through supplemental appropriation ordinances.

OCA calculated the requested increases using actual expenditures through July 31, 2012 and then used monthly average expenditure rates to project future expenditures through December 31, 2013, as shown in the Attachment to this report.

The agreements with En Pointe (File 12-0860) and ComputerLand (File 12-0862) are anticipated to reach their existing not-to-exceed limits in September 2012. As a result, as shown in the Attachment, the requested increases for En Pointe and ComputerLand were calculated based on 16 months of average expenditures (September 2012 through December 2013). In contrast, the agreement with Xtech is expected to reach its existing not-to-exceed limit in December 2012, such that the requested increase for Xtech was calculated based on 13 months of average expenditures (December 2012 through December 2013). In addition, as shown in the Attachment, a two-month contingency was added to each of the three agreements to account for variability and uncertainty with regard to departmental spending with the three vendors. OCA also rounded these estimates up to the nearest $10,000 in order to calculate the proposed request. The Budget and Legislative Analyst concurs with the projected calculations, submitted by OCA.

RECOMMENDATIONS

Approve the three proposed resolutions.

File No.	Contract Vendor	Start of Contract	Current Term	Proposed New Term	Current Not-to-Exceed Amount (A)	Total Expenditures as of 7/31/2012	Balance Remaining	Average Monthly Expenditures, 1/1/2009 - 7/31/2012 (B)	Months of Addl. Spending Authority Needed [1] (C)	Additional Estimated Amount (B x C) = D	Contingency of 2 Months Spend (B x 2) = E	Calculated Increase (D+E)	Calculated Increase, rounded (F)	New Contract Value (A+F)
12-0860	**En Pointe**	1/1/2009	12/31/2012	12/31/2013	38,490,000	37,401,445	1,088,555	869,801	16	13,916,816	1,739,602	15,656,418	15,660,000	54,150,000
12-0861	**Xtech**	1/1/2009	12/31/2012	12/31/2013	51,490,000	47,003,174	4,486,826	1,093,097	13	14,210,261	2,186,194	16,396,455	16,400,000	67,890,000
12-0862	**ComputerLand**	1/1/2009	12/31/2012	12/31/2013	24,490,000	23,813,800	676,200	553,809	16	8,860,944	1,107,618	9,968,562	9,970,000	34,460,000

1. The agreements with **En Pointe** (File 12-0860) and **ComputerLand** (File 12-0862) are anticipated to reach their existing not-to-exceed limits in September 2012. As a result, the requested increases for En Pointe and ComputerLand were calculated based on 16 months of average expenditures (September 2012 through December 2013). The agreement with **Xtech** is expected to reach its existing not-to-exceed limit in December 2012. As a result, the requested increase for Xtech was calculated based on 13 months of average expenditures (December 2012 through December 2013).

3, 4 & 5 - 6

ATTACHMENT

City and County of San Francisco

Edwin M. Lee
Mayor

Office of Contract Administration

Jaci Fong
Director and Purchaser

Purchasing

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2012 AUG 24 AM 11: 21
BY

August 23, 2012

To: Angela Calvillo
Clerk of the Board

From: Jaci Fong
Purchaser and Director

Subject: Resolution approving an increase in the dollar amount for the Category 2 Products contract with En Pointe Technology Sales, Inc.

The Office of Contract Administration is submitting the enclosed resolution to authorize the Fifth Amendment to the City's contract with En Pointe Technology Sales, Inc. for Category 2 Products to increase the contract's dollar limit from $38,490,000 to $54,150,000, to exercise the second of the two options extending the contract by one year through December 31, 2013, and to update standard contractual clauses. The proposed increase is based on our estimates of the volume of business the City would do with this vendor between now and the end of the proposed term of the contract on December 31, 2013.

If you have any questions, please contact Bill Jones at 415-554-6730. Thank you for your consideration.

Enclosures

120860

City Hall, Room 430 1 Dr. Carlton B. Goodlett Place Tel. (415) 554-6743 Fax (415) 554-4337 San Francisco CA 94102-4685

City and County of San Francisco
Office of Contract Administration
Purchasing Division

Fifth Amendment

THIS AMENDMENT (this "Amendment") is made as of _____, in San Francisco, California, by and between **En Pointe Technology Sales, Inc.**, ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below) when the Board of Supervisors approved Resolution No. 508-08 on December 9, 2008;

WHEREAS, the Board of Supervisors approved the First Amendment by Resolution No. 233-11 on June 7, 2011 modifying the Agreement to increase the not-to-exceed amount from $24,000,000 to $28,000,000;

WHEREAS, the Director of the Office off Contract Administration and the Purchaser approved the Second Amendment to extend the Agreement until December 31, 2012 and to increase the not-to-exceed amount from $28,000,000 to $28,475,000;

WHEREAS, the Board of Supervisors approved the Third Amendment by Resolution No. 5-12 on January 10, 2012 modifying the Agreement to increase the not-to-exceed amount from $28,475,000 to $38,000,000;

WHEREAS, the Director of the Office off Contract Administration and Purchaser approved the Fourth Amendment to increase the not-to-exceed amount from $38,000,000 to $38,490,000;

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the amount from $38,490,000 to $54,150,000, to extend the contract by one year to December 31, 2013, and to update standard terms and clauses;

WHEREAS, approval for this Amendment was obtained when the Board of Supervisors approved Resolution No. _____ on _____, 2012

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

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term "Agreement" shall mean the Agreement dated January 1, 2009 between Contractor and City, as amended by the:

First amendment, dated June 17, 2011, and
Second amendment, dated November 21, 2011, and

Third amendment, dated January 17, 2012, and
Fourth amendment, dated June 28, 2012.

1b. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Term. Section 2 of the Agreement, "**Term of the Agreement**" currently read as follows:

2. Term of the Agreement.

Subject to Section 1, the term of this Agreement shall be from January 1, 2009 to December 31, 2012. The Agreement may be extended with an option to extend the contract for up to one year at the sole and absolute discretion of the City.

Such section is hereby amended in its entirety to read as follows:

2. Term of the Agreement.

Subject to Section 1, the term of this Agreement shall be from January 1, 2009 to December 31, 2013.

2b. Compensation. Section 5 of the Agreement, "**Compensation**", currently reads as follows:

5. Compensation

Compensation shall be made by ordering departments in accordance with the terms of each authorization for an order. In no event shall the amount of this agreement exceed **$38,490,000 (thirty-eight million, four hundred ninety thousand dollars).**

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Ordering Department or Purchasing as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

Such section is hereby amended in its entirety to read as follows:

5. Compensation

Compensation shall be made by ordering departments in accordance with the terms of each authorization for an order. In no event shall the amount of this agreement exceed **$54,150,000 (Fifty four million, one hundred and fifty thousand dollars).**

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Ordering Department or Purchasing as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

2.c Submitting False Claims Monetary Penalties. Section 8 of the Agreement, "**Submitting False Claims Monetary Penalties,**" is hereby replaced in its entirety to read as follows:

8. Submitting False Claims; Monetary Penalties.

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

2.d. Indemnification. Section 16 of the Agreement, "**Indemnification,**" is hereby replaced in its entirety to read as follows:

16. Indemnification.

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for

injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

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

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

Recommended by:

_____

Bill Jones
IT Purchasing Manager
OCA / Purchasing

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Catharine Barnes
Deputy City Attorney

Approved:

_____

Jaci Fong
Director of the Office of Contract Administration,
and Purchaser

CONTRACTOR

En Pointe Technology Sales, Inc.

_____

Mac McConnell
Sales Manager
1 California Street, Suite 2800
San Francisco, CA 94111

City vendor number: 58893

City and County of San Francisco
Office of Contract Administration
Purchasing Division

Fourth Amendment

THIS AMENDMENT (this "Amendment") is made as of June 28, 2012, in San Francisco, California, by and between **En Pointe Technology Sales, Inc.**, ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the contract amount;

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

1. **Definitions.** The following definitions shall apply to this Amendment:

1a. **Agreement.** The term "Agreement" shall mean the Agreement dated January 1, 2009 between Contractor and City, as amended by the:

First amendment, dated June 17, 2011, and
Second amendment, dated November 21, 2011, and
Third amendment, dated January 17, 2012.

1b. **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

2a. **Compensation.** Section 5 of the Agreement, "Compensation", currently reads as follows:

5. Compensation

Compensation shall be made by Ordering Departments in accordance with the terms of each Authorization for an Order. In no event shall the amount of this Agreement exceed $38,000,000 (thirty-eight million dollars).

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are

received from Contractor and approved by the Ordering Department or Purchasing as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

Such section is hereby amended in its entirety to read as follows:

5. Compensation

Compensation shall be made by ordering departments in accordance with the terms of each authorization for an order. In no event shall the amount of this agreement exceed $38,490,000 (thirty-eight million, four hundred ninety thousand dollars).

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Ordering Department or Purchasing as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

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

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

Recommended by:

Bill Jones
IT Purchasing Manager
OCA / Purchasing

CONTRACTOR

En Pointe Technology Sales, Inc.

Mac McConnell
Sales Manager
1 California Street, Suite 2800
San Francisco, CA 94111

City vendor number: 58893

Approved as to Form:

Dennis J. Herrera
City Attorney

By:
Catharine Barnes
Deputy City Attorney

Approved:

Jaci Fong
Director of the Office of Contract Administration, and Purchaser

City and County of San Francisco
Office of Contract Administration
Purchasing Division

Third Amendment

THIS AMENDMENT (this "Amendment") is made as of January 17, 2012, in San Francisco, California, by and between **En Pointe Technology Sales, Inc.**, ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the contract amount; and

WHEREAS, approval for this Amendment was obtained when the Board of Supervisors approved resolution number_____ on January __, 2012;

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

1. **Definitions.** The following definitions shall apply to this Amendment:

1a. Agreement. The term "Agreement" shall mean the Agreement dated January 1, 2009 between Contractor and City, as amended by the

First amendment, dated June 17, 2011, and
Second amendment, dated November 21, 2011.

1b. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

2a. Compensation. Section 5 of the Agreement, "**Compensation**", currently reads as follows:

5. Compensation

Compensation shall be made by Ordering Departments in accordance with the terms of each Authorization for an Order. In no event shall the amount of this Agreement exceed $28,475,000 (twenty eight million four hundred seventy five thousand dollars).

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Ordering Department or Purchasing as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

Such section is hereby amended in its entirety to read as follows:

5. Compensation

Compensation shall be made by Ordering Departments in accordance with the terms of each Authorization for an Order. In no event shall the amount of this Agreement exceed $38,000,000 (thirty eight million dollars).

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Ordering Department or Purchasing as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this amendment.

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

Recommended by:

Galen Leung
Supervising Purchaser, IT Purchasing
Office of Contract Administration

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Deputy City Attorney

Approved:

Jaci Fong
Acting Director
Office of Contract Administration

CONTRACTOR

En Pointe Technology Sales, Inc.

Mac McConnell
Sales Manager
1 California Street, Suite 2800
San Francisco, CA 94111

City vendor number: 58893

City and County of San Francisco
Office of Contract Administration
Purchasing Division

Second Amendment

THIS AMENDMENT (this "Amendment") is made as of November 21, 2011, in San Francisco, California, by and between **En Pointe Technology Sales, Inc.**, ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to exercise the first of two options to extend the contract by one year, increase the contract amount and update standard contractual clauses;

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

1. **Definitions.** The following definitions shall apply to this Amendment:

1a. Agreement. The term "Agreement" shall mean the Agreement dated January 1, 2009 between Contractor and City, as amended by the

First amendment, dated June 17, 2011.

1b. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

2a. Term. Section 2 of the Agreement, "**Term of the Agreement**", currently reads as follows:

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from January 1, 2009 to December 31, 2011. The Agreement may be extended with an option(s) to extend the contract for up to two years at the sole and absolute discretion of the City.

Such section is hereby amended in its entirety to read as follows:

2. **Term of the Agreement**

Subject to Section 1, the term of this Agreement shall be from January 1, 2009 to December 31, 2012. The Agreement may be extended with an option to extend the contract for up to one year at the sole and absolute discretion of the City.

2b. Compensation. Section 5 of the Agreement, "**Compensation**", currently reads as follows:

5. **Compensation**

Compensation shall be made by Ordering Departments in accordance with the terms of each Authorization for an Order. In no event shall the amount of this Agreement exceed $28,000,000 (twenty eight million dollars).

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Ordering Department or Purchasing as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

Such section is hereby amended in its entirety to read as follows:

5. **Compensation**

Compensation shall be made by Ordering Departments in accordance with the terms of each Authorization for an Order. In no event shall the amount of this Agreement exceed $28,475,000 (twenty eight million four hundred seventy five thousand dollars).

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Ordering Department or Purchasing as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

2c. Insurance. Section 15 of the Agreement, "**Insurance**," is hereby replaced in its entirety by Section 15 "**Insurance**," to read as follows:

15. **Insurance**

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

(2) Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence, $2,000,000 aggregate for bodily injury, property damage, contractual liability, personal injury, products and completed operations.

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

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

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

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

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

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

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

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

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

j If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this amendment.

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

Recommended by:

Galen Leung
Supervising Purchaser, IT Purchasing
Office of Contract Administration

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Deputy City Attorney

Approved:

Jaci Fong
Acting Director
Office of Contract Administration

CONTRACTOR

En Pointe Technology Sales, Inc.

Mac McConnell
Sales Manager
1 California Street, Suite 2800
San Francisco, CA 94111

City vendor number: 58893

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CONTRACT ADMINISTRATION
PURCHASING DIVISION

First Amendment

THIS AMENDMENT (this "Amendment") is made as of June 17, 2011, in San Francisco, California, by and between **En Pointe Technology Sales, Inc.**, ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, The Board of Supervisors approved an agreement with Contractor on December 10, 2008 by resolution number 508-08

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the contract amount and update standard contractual clauses.

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

1. **Definitions.** The following definitions shall apply to this Amendment:

1a. Agreement. The term "Agreement" shall mean the Agreement, dated January 1, 2009 between Contractor and City.

1b. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

2a. Compensation. Section 5 of the Agreement, "**Compensation**", currently reads as follows:

5. Compensation

Compensation shall be made by Ordering Departments in accordance with the terms of each Authorization for an Order. In no event shall the amount of this Agreement exceed $24,000,000 (twenty four million dollars).

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Ordering Department or Purchasing as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

Such Section is amended in its entirety to read as follows:

5. Compensation

Compensation shall be made by Ordering Departments in accordance with the terms of each Authorization for an Order. In no event shall the amount of this Agreement exceed $28,000,000 (twenty eight million dollars).

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Ordering Department or Purchasing as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

2b. Submitting False Claims Monetary Penalties. Section 8 of the Agreement, "**Submitting False Claims Monetary Penalties,**" is hereby replaced in its entirety to read as follows:

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at http://www.municode.com/Library/clientCodePage.aspx?clientID=4201. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

2c. Insurance. Section 15 of the Agreement, "**Insurance,**" is hereby replaced in its entirety to read as follows:

15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

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

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

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

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

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

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

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

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

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

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

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

2d. Limitations on Contributions. Section 42 of the Agreement, "**Limitations on Contributions,**" is hereby replaced in its entirety to read as follows:

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

2e. Requiring Minimum Compensation for Covered Employees. Section 43 of the Agreement, "**Requiring Minimum Compensation for Covered Employees,**" is hereby replaced in its entirety to read as follows:

43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these

remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than $25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed $25,000 in the fiscal year.

2f. Requiring Health Benefits for Covered Employees. Section 44 of the Agreement, **"Requiring Health Benefits for Covered Employees,"** is hereby replaced in its entirety to read as follows:

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its

Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.
City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

l. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than $25,000 ($50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach $75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than $75,000 in the fiscal year.

2g. First Source Hiring. Section 45 of the Agreement, "**First Source Hiring,**" is hereby replaced in its entirety to read as follows:

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter,

including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement. As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be non-duplicative, and facilitate a coordinated flow of information and referrals.

5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop

employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

6) Set the term of the requirements.

7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. **Hiring Decisions.** Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. **Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. **Liquidated Damages.** Contractor agrees:

1) To be liable to the City for liquidated damages as provided in this section;

2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantity; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to $5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to $10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward,

does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

(a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of $348 per month, totaling approximately $14,379; and

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Therefore, liquidated damages that total $5,000 for first violations and $10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of $5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

2h. Cooperative Drafting. Section 61 is hereby added to the Agreement as follows:

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

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

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

Recommended by:

Galen Leung
Manager IT Purchasing
Office of Contract Administration

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Deputy City Attorney

Approved:

Jaci Fong
Acting Director
Office of Contract Administration

CONTRACTOR

En Pointe Technology Sales, Inc.

Mac McConnell
Sales Manager
En Pointe Technology Sales, Inc.
1 California Street, Suite 2800
San Francisco, CA. 94111

City vendor number 58893

City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685

Agreement between the City and County of San Francisco and

En Pointe Technology Sales, Inc.

This Agreement is made this 1st day of January, 2009, in the City and County of San Francisco, State of California, by and between: **En Pointe Technology Sales, Inc., 1 California Street, Suite 2800, San Francisco, CA. 94111**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the Office of Contract Administration ("Department") wishes to procure computer hardware, software, and associated manufacturer's warranty or support packages and other technology products; and,

WHEREAS, a Request for Proposal ("RFP") was issued on April 8, 2008, and City selected Contractor as one of the four highest qualified scorers pursuant to the RFP; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and,

WHEREAS, approval for this Agreement was obtained when the Board of Supervisors approved resolution number 508-08 on **December 10, 2008.**

Now, THEREFORE, the parties agree as follows:

DEFINITIONS:

AUTHORIZATION
Purchase Order or Blanket Purchase Order or Release against a Blanket Order of the City properly executed by City and certified by the Controller for the specific funding of an Order or any modification thereof.

CHANGE ORDER
A written instrument authorized in accordance with the requirements established by City that modifies an Order through an adjustment to one or more of the following: (i) the price, (ii) the product (iii) project schedule, (iv) the project scope of work, or (v) the acceptance criteria.

CITY
The City and County of San Francisco, acting through the Office of Contract Administration with its offices at 1 Dr. Carlton B. Goodlett Place, Room 430, San Francisco, California 94102.

CITY CONTRACT COMPLIANCE MANAGER (CCCM)
The City representative appointed by the Committee on Information Technology (COIT) to administer the Computer Store contract who shall serve as a primary contact to Contractor, and from whom Contractor is authorized to accept instructions for the administration of this Agreement.

COIT
The Committee on Information Technology of the City and County of San Francisco.

CONSULTING SERVICES
Any Service, (excluding Hardware Maintenance and Software Support Services) that involves retaining the professional expertise of a Contractor or Subcontractor to perform tasks that may include but are not limited to: implementation, assembly, installation, optimization, and integration of Hardware or Software, re-engineering business processes, linking business and technology strategies, system design, Software development, enhancing information processing capabilities, managing and/or performing work on a project to provide deliverables, project management, training services, hourly professional services such as assisting on a technical task, or systems integration services such as acting as a prime contractor to deliver an integrated system that may consist of a combination of Software, Services, and/or Hardware.

CONTROLLER
Controller of the City and County of San Francisco.

DT
The Department of Technology of the City and County of San Francisco.

HARDWARE
Data processing machinery and equipment, including firmware, instruction sets, conversions, upgrades, elements, or accessories, peripherals or any combination of them.

HARDWARE MAINTENANCE SERVICE
The Services Contractor provides to maintain Hardware in a functional condition, to restore non-functional Hardware to good working order, or to exchange it with a functionally equivalent Hardware, in accordance with a program of regular maintenance service the Ordering Department has selected from those available for that Hardware, as evidenced in the Order for that Hardware or for Hardware Maintenance Services.

OCA
The Office of Contract Administration of the City and County of San Francisco.

ORDER
An Authorization for the procurement of Products or Services which has been executed and certified in accordance with applicable City requirements, and the negotiated terms and specifications that govern the Products or Services to be delivered pursuant to that Order. All Orders by City Departments are subject to the prior approval of DT and Purchasing.

ORDERING DEPARTMENT
A department of the City and County of San Francisco, or other public agency, which initiates a requisition for the order of products or services pursuant to the authorized procedures set forth in this Agreement.

PRODUCT
Hardware, Software and/or Supplies, or any combination of them, procured through this Agreement.

PURCHASE ORDER
A City Purchase Order, Blanket Purchase Order, Contract Order or other document issued by Purchasing for the purpose of authorizing procurement of Products or Services by a City department.

PURCHASING
The Purchasing Division of the Office of Contract Administration of the City and County of San Francisco.

SERVICE
The performance of a task, provision of advice and counsel, assistance or use of a resource that Contractor makes available to City, including but not limited to Software Support Services, Hardware Maintenance Services, Consulting Services and Training Services.

SOFTWARE
Machine-readable instructions and any associated audio visual content (such as images, text recordings, music or pictures) and related materials, including documentation, and any subsequent versions or releases.

SOFTWARE SUPPORT SERVICES
The provision of services by Contractor directly or through the Software manufacturer or a subcontractor for any Software licensed to or owned by an Ordering Department pursuant to this Agreement, or for any Software licensed by an Ordering Department other than through this Agreement for which Contractor agrees to make Software Support Services available, which may include but is not limited to upgrades, defect correction information, patches, bug fixes, telephone support, responding to problems with Software reported by the Ordering Department and adaptation of Software to Hardware devices, as specified in the Order for Software or for Software Support Services.

SPECIFICATIONS
A document that provides information specific to a Product, including the manufacturer's technical literature, which contains information as to the functions of a Product and/or the resources required for its proper operation. The Contractor shall provide specifications for any Products offered upon the request of an Ordering Department.

SUPPLIES
Consumable items to be used with Products, such as printer paper and forms, ink cartridges and data diskettes.

TECHNOLOGY STORE
The multiple award contract made available to City Ordering Departments and other governmental agencies and jurisdictions for the efficient and cost-effective procurement of computer hardware, software and services.

UNAVOIDABLE DELAY
An interruption of the work beyond the control of Contractor and which interruption the Contractor could not have avoided by the exercise of care, prudence, foresight and diligence. Such delays include and are limited to acts of God; acts of the public enemy; adverse weather conditions; fires; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sitdowns; slowdowns; labor shortages; inability of Contractor to procure labor; material shortages; inability of Contractor to procure material; fuel shortages; freight embargoes; accidents; acts of a governmental agency; priorities or privileges established for the manufacture, assembly or allotment of materials by order, decree or otherwise of the United States or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority; changes in the work ordered by the Ordering department, insofar as they necessarily require additional time in which to complete the entire work; the prevention by the City and County of a Contractor from commencing or prosecuting the work; the prevention of a Contractor from commencing or prosecuting the work because of the acts of others, excepting the Contractor's subcontractors; the prevention of a Contractor from commencing or prosecuting the work because of the failure of the City and County to furnish the necessary materials, when required by the terms of an Order and when requested by the Contractor in a manner provided in the Order; and inability to procure or failure of public utility service. The duration of Unavoidable Delays shall be limited to the extent that the commencement, prosecution and completion of the work are delayed thereby, as determined by the Ordering Department.

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from January 1, 2009 to December 31, 2011. The Agreement may be extended with an option(s) to extend the contract for up to two years at the sole and absolute discretion of the City.

3. Effective Date of Agreement

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

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation shall be made by Ordering Departments in accordance with the terms of each Authorization for an Order. In no event shall the amount of this Agreement exceed $24,000,000 (twenty-four million dollars).

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Ordering Department or Purchasing as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

6. Guaranteed Maximum Costs

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

b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

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

7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City.

Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to $10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Left blank by agreement of the parties.

10. Taxes

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

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work

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

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Taxes and Other Expenses.

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

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

15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

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

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

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

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

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

c. All policies shall provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

Office of Contract Administration
1 Dr. Carlton B. Goodlett Place
City Hall, Room 430
San Francisco, CA. 94102

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

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

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

i. If a subcontractor will be used to complete any portion of this Agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

16. Indemnification

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but

not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

a. General Indemnity

To the fullest extent permitted by law, Contractor shall assume the defense of, indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees and costs of investigation), that arise directly or indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Contractor and subconsultant to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.

b. Limitations

(1) No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.

(2) The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

(3) The Contractor's indemnification obligations of claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent of the Contractor's negligence or other breach of duty.

c. **Copyright Infringement**

Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Contractor's services under this Agreement.

17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

18. Liability of City

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Delays; Unavoidable Delays; Liquidated Damages

a. Delays

1. Prior to commencing a project end-user departments and Contractor shall develop a project timeline and scope of work designating the Contractor's responsibility for each phase of the project and the City's responsibilities if any. Any delays encountered by Contractor or City in the performance of this Agreement will be excused if and to the extent such delays are deemed unavoidable as determined by the department head administering the project.

2. Either party's failure to notify the other party on a timely basis of any unavoidable delay will subsequently constitute a waiver of the delayed party's right to claim an unavoidable delay. Contractor and City shall have the right to review and contest the validity of any unavoidable delay claimed by the other party.

3. Other than agreed upon compensation for Products or Services to be delivered under this Agreement and except as otherwise provided by law or the provisions of this Agreement, no monetary damages or compensation of any kind will be paid to Contractor due to unavoidable delays in the performance of this Agreement. To the fullest extent permitted by law, Contractor agrees to waive all claims against the City, its consultants, and their respective directors, officers, agents, employees, and authorized representatives, for any loss or damage sustained by reason of delays in the performance of this Agreement.

4. If a delay would affect a Project Schedule in an Order for Consulting Services, within ten (10) business days of either party encountering a delay, the delayed party must

notify the other party in writing of the delay and the nature and estimated length of the delay (which, if issued by Contractor shall constitute Contractor's Delay Claim). Contractor and City will thereafter work cooperatively to develop a revised Project Schedule. City will respond to Contractor's Delay Claim within ten (10) business days after both receipt of the Delay Claim and the completion of the revised Project Schedule. In the event that Contractor and City cannot agree on a revised Project Schedule, then City must respond to Contractor's Delay Claim within ten (10) business days after City notifies Contractor of the inability to agree on a Revised Project Schedule. Until both Contractor and City agree on the revised Project Schedule, the existing Project Schedule shall remain in effect and liquidated damages will not accrue for any period in excess of ten (10) business days during which Contractor is waiting for City's response to its Delay Claim.

b. Liquidated Damages

In developing a Project Schedule specific to an Order for Consulting Services, the parties may agree upon Critical Milestones for a particular project subject to liquidated damages. By entering into this Agreement, Contractor agrees that in the event the performance of Consulting Services are delayed beyond the Critical Milestones set forth in a Project Schedule, City will suffer actual damages that will be impractical or extremely difficult to determine. Any Project Schedule containing Critical Milestones shall also state the amount of liquidated damages for any failure to meet those Critical Milestones, which shall not be a penalty, but shall be a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time the Project Schedule was agreed upon. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed in the Project Schedule or such extensions of time permitted in writing by Purchasing.

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, or 58.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or

reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

(7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

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

24. Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties

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

To City:	Office of Contract Administration 1 Dr. Carlton B. Goodlett Place City Hall, Room 430 San Francisco, CA. 94102	 Fax: 415-554-4047 E-mail: jaci.fong@sfgov.org
To Contractor:	Mac McConnell En Pointe Technology Sales, Inc. 1 California Street, Suite 2800 San Francisco, CA. 94111	 Fax: 415-765-7121 E-mail: mmcconnell@enpointe.com

Any notice of default must be sent by registered mail.

26. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

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

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Earned Income Credit (EIC) Forms

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

(1) Enforcement

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or $1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the

sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(2) Subcontracting Goals

The LBE subcontracting participation goal for this contract is 0% of the total value of services procured under this contract. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor.

Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

(3) Subcontract Language Requirements

Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors.

Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(4) Payment of Subcontractors

Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days

prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount.

Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. **Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act

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

40. Sunshine Ordinance

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

41. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least $250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions

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

43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some

of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than $25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This

obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed $25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission..

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than $25,000 ($50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach $75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than $75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. **Hiring Decisions**

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. **Exceptions**

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. **Liquidated Damages**

Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantity; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to $5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to $10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of $348 per month, totaling approximately $14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the

average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total $5,000 for first violations and $10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

(7) That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of $5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood

containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

49. Administrative Remedy for Agreement Interpretation

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

50. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

51. Construction

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

52. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

53. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

55. Supervision of Minors

Contractor, and any subcontractors, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Contractor, or any subcontractor, in which he or she would have supervisory or disciplinary power over a minor under his or her care.

If Contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3).

If Contractor, or any of its subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Contractor shall comply, and cause its subcontractors to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Contractor shall provide, or cause its subcontractors to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian.

Contractor shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this section of the Agreement as a condition of its contract with the subcontractor.

Contractor acknowledges and agrees that failure by Contractor or any of its subcontractors to comply with any provision of this section of the Agreement shall constitute an Event of Default. Contractor further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Agreement, partially or in its entirety, to recover from Contractor any amounts paid under this Agreement, and to withhold any future payments to Contractor. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

56. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

57. Protection of Private Information

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this

Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

58. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars ($100) liquidated damages for the first breach, two hundred dollars ($200) liquidated damages for the second breach in the same year, and five hundred dollars ($500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

60. Slavery Era Disclosure

a. Contractor acknowledges that this contract shall not be binding upon the City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this Contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or $1,000, whichever is greatest as determined by the Director. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

c. Contractor shall maintain records necessary for monitoring their compliance with this provision.

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

CITY	CONTRACTOR
Recommended and Approved by: Naomi Kelly Director of the Office of Contract Administration, and Purchaser Approved as to Form: Dennis J. Herrera City Attorney By: Vicki A. Clayton Deputy City Attorney VICKI A. CLAYTON Naomi Kelly Director of the Office of Contract Administration, and Purchaser	**En Pointe Technology Sales, Inc.** By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off. I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles. Mac McConnell Sales Manager En Pointe Technology Sales, Inc. 1 California Street, Suite 2800 San Francisco, CA. 94111 City vendor number: 58893

Appendices

A: General Administrative Requirements: Scope of Work
B: Calculation of Charges
C. RFP and all amendments are incorporated herein and En Pointe's responses to the RFP are incorporated herein by reference.
D. Sample Agreements to be executed as applicable on a per project basis, substantially in the form attached:

i. P-545 Software License
ii. P-540 Software Maintenance

Appendix A

Appendix B
Calculation of Charges

Prices charged for IBM, HP/Compaq, Dell and Cisco products shall at a minimum be based on the following discounts off product list prices:

Percent Discounts off Manufacturers' List Prices

Equipment Category	IBM	HP/Compaq	Dell	Cisco
Workstations		30	19.25	
Laptops		19	14	
Printers		22.5	2	
Peripheral Equipment		19	25	
Network Products:				
Routers	11	34	20	33.5
Servers	11	21	24	33.5
Fiber Switches	11	11	20	33.5
Storage Network Devices	14	3.25	20	33.5
Network Attach Storage	14	14	20	33.5
Software	12	27	25	33.5
Tape Libraries	12	12	20	33.5

If the major manufacturers (Cisco, Dell, HP, or IBM) change their pricing structure during the term of the contract, such that it becomes impossible to utilize the Discount off of List Price pricing structure utilized in the RFP, the City and the Technology Store vendors may negotiate a mutually acceptable alternative. If the City and vendors cannot agree on a mutually acceptable alternative, the City reserves the right to cancel the contract.

Appendix B (continued)

Prices charged for all other product lines shall not exceed the following Percentage Markups on all other manufacturers' prices.

	Equipment Category	Mark-up percentage, 1-23 units	Mark-up percentage, 24 units and up
a.	Laptops	7.5	5.25
b.	Desktops	6.5	4.25
c.	Servers	6.5	4.25
d.	Printers	8.5	6.5
e.	Monitors	7.5	6.5
f.	Accessories	10	7.5
g.	Software	8.75	6.5
h.	Surveillance cameras	10	8.5
i.	Enterprise networking equipment	10	7.5
j.	Other	10	7.5

Appendix C

RFP and all amendments are incorporated herein and Contractor's response to the RFP are incorporated herein by reference.

Appendix D

Sample Agreements to be executed as applicable on a per project basis, incorporated by reference.

i. P-545 Software License
ii. P-540 Software Maintenance

Appendix A

General Administrative Requirements: Scope of Work

This Scope of Work is to be used as a general guide for procedures for ordering products and services under the Current Computer Store. New guidelines and procedures will be developed for the Technology Store Contract although they should be similar, procedures are subject to change and is not intended to be a complete list of all work necessary under the contract.

A. Summary of the quotation and ordering process

This section describes generally how the day-to-day operations of the Technology Store work. These draft procedures are subject to change. The ordering process will work like this:

1. A department emails a Store vendor and requests a written quotation for products or services.

    - For high-dollar orders, Purchasing requires departments to seek at least three quotations. Under the current Computer Store, $100,000 is the threshold defining high-dollar orders. This $100,000 threshold could change with the new Technology Store, and the threshold could change during the life of the new contract. For orders exceeding $100,000 subcontracting information is also required by HRC.
    - For medium-dollar orders, Purchasing encourages departments to request quotations from more than one Store vendor.
    - For low-dollar orders Department should first look to a Micro LBE if possible. Purchasing does not require departments to seek more than one quotation, but encourages it.

2. The vendor completes the quotation and e-mails it to the department.

3. The department submits the quotation to Purchasing for review. If the quotation exceeds $10,000 Purchasing may submit the quotation to COIT or DTIS for review. If the quotation contains any services, the quotation is sent to Union Local 21 for review and comment.

4. Once approved, Purchasing creates the purchase order and transmits it to the vendor.

B. Ordering, delivery, invoicing and related procedures

1. Preparing the quotation

Contractors must provide written responses to requests for quotes for products only within 48 hours (excluding weekends) and within 7 days (excluding weekends) for products and services, with one of the following: a quote, request for an extension of time (which may or may not be granted), or "no bid".

2. Ordering

Products and services shall be ordered by the City by means of a Purchase Order or Blanket Purchase Order and approved by Purchasing. All orders must be signed, approved and issued by Purchasing or as authorized by Purchasing in writing.

Contractors may not accept verbal orders from Departments, or any order that is not on a Purchase Order or Blanket Purchase Order approved by Purchasing. Contractors shall accept orders by fax or e-mail.

Within three working days after receipt of an order, the Contractor must verify the accuracy of the order and provide written or electronic notification of Contractor's acceptance or rejection of the order and delivery dates.

Contractor shall not accept orders from any Department that has had its ordering privileges suspended. A list of Departments receiving such suspensions will be furnished to the Contractor by Purchasing.

If an item is discontinued, the Contractor must notify Purchasing and the end user department within three working days of receipt of an order or upon notification by the manufacturer or distributor (whichever comes first) that the order cannot be filled. The Contractor must not fill the order with a substitute item without the prior written approval of Purchasing. Items that are substituted without approval may be returned at no cost to the City and the order cancelled.

3. Delivery

Contractor shall deliver products to Technology Store customers within ten City business days after receipt of the order, unless the product is not available from the manufacturer. Contractor must notify any Department placing an order within 72 hours if delivery of that order will be delayed beyond ten City business days. Contractor must keep Technology Store customers apprised of changes in the delivery status of their delayed orders.

Contractor must deliver, free of charge, all products sold through the Technology Store. All shipments shall be made "FOB Destination" to all City delivery locations identified on the Purchase Order. Some delivery locations may be outside of San Francisco City limits.

Orders must be delivered in total, unless a prior written authorization for partial shipment has been received from the Technology Store customer placing the order.

All products shall be delivered inside the building.

If the Contractor fails to deliver an article or service of the quality, in the manner or within the time called for by the Technology Store contract or an individual order, then City may cancel the order at no cost to the City and acquire such article or service from any source. If City pays a greater price than that named in the contract or order for such article or service, the excess price may be charged to and collected from Contractor and/or from the financial guarantee provided by Contractor; or, the City may treat the failure as a default subject to all applicable rights and remedies under the contract; or, the City may return deliveries already made and receive a refund from Contractor.

4. Invoicing

For products or services invoices may be submitted only after delivery is complete. Invoices must clearly state the terms of any "prompt pay" discount. A packing slip must be included with each shipment of products to Technology Store customers and must show the Purchase Order number, a complete list of items delivered, and the Department name and contact person. The Purchase Order number must also appear on the outside of the package.

5. Return rights

Contractors shall accept all Standard Products if they have not been opened, for return within thirty days of delivery and credit the customer in full. The City shall not pay any restocking fees. Standard Products are products from the 4 major vendors listed in Table 1 on page 12. For all other products and opened products, Contractors may only pass through actual and reasonable restocking fees incurred from a third party. Administrative costs and handling fees are not allowed.

6. Cancellation

Contractor must allow any order, other than orders of non-Standard Products, to be cancelled by the Department that placed the order 7 days prior to its scheduled delivery.

7. Title and Warranties

a. Warranty Service

Contractors shall pass on all warranties offered by manufacturers to the City on all products. The Contractor must also offer any additional warranty services offered by a manufacturer for purchase.

b. Passage of title

Contractors must pass title of product purchased to the City within 48 hours (excluding weekends) of delivery and the City must be eligible for all benefits of ownership including free services provided under manufacturer's warranties within 48 hours (excluding weekends) of delivery of product. If after 48 hours the City cannot obtain service under the manufacturer's warranty, because title has not been properly passed to the City by the Contractor or the Contractor has not properly recorded ownership, the City shall immediately notify the Contractor. Contractor will have 24 hours to record title of the product properly, repair the product or replace the non-working product with a comparable working product. Failure to comply with any of the above may result in penalties of up to $100 per day from the date that the issue is first reported by the City.

C. Communications with the City

1. General communications with the City

Contractors must make reasonable efforts to respond to inquiries from City departments within one business day. City inquiries may include requests for consultation, design, pricing, order status, product comparisons, compatibility information and return information.

Contractors must provide a toll-free number to accommodate telephone inquiries staffed by adequate personnel to provide prompt, courteous, and informed answers to customer inquiries within two

hours of the customer's initial call. Contractors must offer a "Help Desk" option to Technology Store clients.

2. E-mail

Contractors must provide E-mail communication capacity with the City. Such E-mail communication must be compatible with that used by the City and any public sector entities to which the Technology Store Contract applies.

3. Account Manager

Contractors must provide an Account Manager to function as the single point of contact with the City at the Technology Store. The Account Manager must be dedicated to servicing the City's account exclusively, and cannot be used to service other accounts of the Contractor. This person will be responsible for all aspects of the Contract and its facilitation. The Account Manager must be available to the City by phone, fax and pager as specified in Section 4.1.7.4 and 6.7.

The proposed Account Manager must meet with Purchasing at least once per month, or as the need arises, at no additional cost to the City to ensure that services continually meet the City's needs.

D. General product policies

1. New products

Contractors must sell only new products to the City. Contractors must offer the latest commercially available versions of any and all hardware and software sold to the City. The City will not accept "gray market products."

If the latest commercially available version is not provided at the time of an order, the version sold must be replaced with the latest version when it becomes available, giving the City full credit for the version that was temporarily supplied.

If a new product is no longer available, then a remanufactured product will only be considered upon prior written notification from Contractor to the City. A remanufactured product will not be shipped to the City unless Purchasing has issued a written letter of acceptance. Remanufactured equipment will only be accepted if it includes the full manufacturer's warranty, is eligible for inclusion under any applicable maintenance contracts and can be certified (as applicable) for maintenance purposes at no additional cost to the City.

2. Prohibited products and minimum specifications

From time to time, the City reserves the right to prohibit Contractor from selling to the City certain products, and to prohibit user Departments from purchasing the same. The City may also set minimum specifications for performance or energy efficiency that may be updated from time to time. Contractor will be required to provide products that comply with these specifications. A Contractor found to be selling products that do not comply with these specifications may be suspended from selling to the City under this contract for a period of up to 3 months.

3. Environmentally preferable product purchasing

The City wishes to ensure that its expenditures of public money are made in a manner consistent with its human health and environmental policies. A primary tool for meeting this goal is the purchase of environmentally preferable products, that is, products for which the environmental impacts have been considered and found to be less damaging to the environment and human health than competing products and services that serve the same purpose. The Precautionary Purchasing Ordinance (San Francisco Environment Code, Chapter 2) establishes the framework for environmentally preferable purchasing efforts in San Francisco.

Computer equipment has been designated as a high priority product category for the City's environmentally preferable purchasing efforts. It is the intention of the City to contract with computer equipment vendors that are willing and able to work as active partners with City staff in promoting environmentally preferable purchasing. The City also wishes to reward vendors and manufacturers that are leaders in reducing the overall environmental impacts of their operations. Vendors selected to participate in this contract will be expected to maintain complete and easily accessible environmental information on their product offerings, including—but not limited to—listings of available equipment that meets the federal Electronic Products Environmental Assessment Tool (EPEAT) criteria, Energy Star® certified product offerings, and information necessary for completing the Federal Electronics Challenge Product Information Sheet. Vendors will be required to offer EPEAT silver- and gold-certified computer products as part of this contract. The City also intends to continually upgrade its environmental criteria for computer purchases.

E. Maintenance and Repair

All maintenance and repair work will be performed by qualified and trained personnel. Contractor must offer written quotes for all product repairs including an estimate of the time and cost of repairs.

F. Consulting and Professional services projects

1. General

This category consists of professional services, such as project management, software development, hardware and software installation, system design, training, and other professional services related to the deployment of technology. It excludes sales and normal maintenance of hardware and software.

A Contractor must submit a detailed Scope of Work defining any consulting or professional services project requested by a Department. The Scope of Work may be subject to approval by DT and may be subject to other reviews such as Local 21, before the project will be permitted to proceed. As applicable, the City may request that the project include a transition plan detailing how the project will eventually be transitioned to City personnel, including a designation of City employees and training plans.

Performance Bonds are highly recommended by Purchasing and may be required by Purchasing based on the level of risk associated with the project. The cost of any performance bond will be the responsibility of the ordering department.

2. Projects over $100,000

The Contractor must submit the following to the requesting Department:

- A detailed Scope of Work ("SOW") defining the project to be delivered to the Department.
- The SOW should include a schedule with agreed upon deliverables and milestones
- The SOW should designate any critical milestones that would be subject to liquidated damages for delay, if applicable.
- The name of the project management software that will be used (such as MS Project)
- Estimate cost of subcontractors and materials.
- Training should be specified as a separate line item and deliverable. Including:
  - i) A detailed description of the training and a list of skills that will be made available through the training to provide for the ongoing maintenance of said project.
  - ii) Estimated timeframe for training.
  - iii) Number of employees to be trained and the number of hours of training to be provided to each employee.
  - iv) The cost associated with training.

The Contractor must agree to 10% retention by the City on progress payments. The retention will be released for payment to the Contractor when the project is accepted by the Department. Progress payments will be linked to a specific deliverable or the meeting of a specific milestone.

The Contractor may be required to provide formal status reports during the life of the project. The format of the status report and the frequency of its preparation will be determined during the project approval process and will be dependent upon a number of variables such as:

- Estimated cost
- Project complexity
- Estimated time
- Other aspects of the project deemed relevant by the City

Any consulting or personal services project that exceeds $100,000 or is expected to require over 90 days to complete may require quarterly meetings that include representation from:

- The ordering Department
- COIT and/or DT
- HRC
- The Technology Store Contractor
- All project sub-contractors

G. Pricing policies

1. Verification of Contractor's prices

Within 7 days of a request, the Contractor must provide evidence of the manufacturer's list price or the actual cost to the Contractor of products and services or subcontracted services sold through the Technology Store as applicable. "Evidence" may consist of an actual manufacturer's price list, a letter provided on the manufacturer's letterhead containing a contact name, signature and telephone number for the manufacturer's representative or actual invoices from manufacturers or distributors or subcontractors to the Contractor for products and services purchased by the City.

2. Violation of pricing requirements

Contractor will abide by percentage discounts bid for commodities or the mark-up percentage limits set by City for sales of commodities and subcontractor services. If Contractor is found to charge discount percentages lower than those agreed upon in this contract, or mark-up percentages higher than those agreed upon in this contract, then Contractor must reimburse the City for the excess charges and Contractor may be prohibited from doing business with the City for a period of up to 3 months. If upon a second inspection, Contractor is found to be in violation of the mark-up percentage limits in this contract, the City in its sole and absolute discretion may terminate this contract.

3. Pricing offered to other customers

Should a Contractor participate in any government, educational, or other special pricing program, e.g., CMAS, GSA, Western States Contracting Alliance, etc., the Contractor must make the same pricing available to the City.

H. Cooperative Agreement

The Director of Purchasing may allow other public agencies or non-profit organizations made up of multiple public agencies to utilize this agreement to obtain some or all of the commodities to be provided by Contractor under the same terms and conditions as the City.

With the exception of City, Contractor shall charge each public agency (the "Ordering Agency") that procures any goods or services under the Technology Store an administrative fee in the amount of 1.9% on each transaction. Contractor shall pay the administrative fee irrespective of whether the Ordering Agency has paid the amount of the fee to Contractor. Contractor shall provide City a monthly report detailing each invoice for goods or services that Contractor submitted to an Ordering Agency. The City may modify the amount of the administrative fee for any fiscal year (July 1 to June 30).

Contractor agrees that this does not create a contractual relationship between City and any Ordering Agency, and that City shall have no liability to Contractor arising out of any agreement between Contractor and any Ordering Agency for goods or services under the Technology Store.

I. Operations, personnel and support

Unless otherwise indicated, Proposers must meet the following requirements at the time the proposal is submitted:

1. Offices

Contractors must have a business office within the City and County of San Francisco.

All of the Contractor's offices that are intended to support the requirements of this RFP must be open and its Technology Store personnel must be available during normal working hours Monday through Friday (8 a.m. to 5 p.m.) except for official City holidays.

2. Training and product information

Contractors shall facilitate access to web-based training, product information and technical support offered by manufacturers to Technology Store clients.

J. Leasing and financing

In consultation with the City's Office of Public Finance, the City may elect to pay for Technology Store acquisitions through tax-exempt lease-purchase financing. The City may provide such financing itself or acquire third party financing, under such terms, conditions and interest rates as may be agreed upon between the parties for each financed transaction. Contractors agree to this type of order and payment method.

Alternatively, the Contractor may also provide financing itself, or acquire other third party financing, under such terms, conditions and interest rates as may be agreed upon between the parties for each financed transaction. Such financing shall be subject to the prior written approval from the Office of Contract Administration.

Contractor shall pass through all warranties for the lease-purchased equipment to the City. The City reserves the right to acquire financing from outside sources. The City's standard Financing Agreement for lease-purchase financing transactions is attached hereto as Appendix D. Provide a detailed description of the program you are offering to the City and a statement indicating your willingness to work with the City's own financing programs.

K. Reports

1. Monthly sales reports

By the tenth day of each month, or the next workday thereafter, Contractors must deliver a report of products and services sold the previous month, including: the type, quantity, manufacturer name, manufacturer's part number and description, price paid per item and name of department. The City may make changes to the format or specifications for this report. The Contractor must comply with all such changes. Contractor shall prepare and submit additional reports in accordance with format and content specifications to be provided by Purchasing.

2. LBE report

For contracts containing LBE subcontracting goals, by the tenth day of each month, or the next workday thereafter, Contractors must provide the City with an HRC Form 7 demonstrating LBE participation and HRC Form 9 if applicable.

3. Proposed subcontractors report

Prior to commencing work on any project involving the use of subcontractors, vendors will submit a list of all proposed subcontractors to the ordering Department before that project can be approved by City. Contractor must submit supplemental subcontractor reports during the course of the project to show any substitution or addition of subcontractors. The substitution and addition will be subject to Department and City's approval. Please provide the following information for each subcontractor: name; address; telephone number; contact name; summary of work to be performed; and mark-up percentage.

File No. 120860

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information *(Please print clearly.)*	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information *(Please print clearly.)*	
Name of contractor: **En Pointe Technology Sales Inc.**	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. ***Use additional pages as necessary.*** 1. En Ponte is a private company and does not have a Board of Directors. 2. Bob Din, CEO; Javed Latif, CFO; Shahzad Munawar, COO. 3. Owership excess of 20 %: Bob Din, Naureen Din. 4. No subcontractor listed in contract, other than HRC certified list. 5. There is no political committee sponsored or controlled by En Pointe.	
Contractor address: 1 California St., Ste 2800, San Francisco, CA/HQ: 18701 S. Figueroa St., Gardena, CA 90248	
Date that contract was approved: *(By the SF Board of Supervisors)*	Amount of contracts: $54,150,000
Describe the nature of the contract that was approved: Computer hardware, software and services	
Comments:	

This contract was approved by (check applicable):

☐the City elective officer(s) identified on this form

☑ a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

_____
Print Name of Board

Filer Information *(Please print clearly.)*	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

_____ _____
Signature of City Elective Officer (if submitted by City elective officer) Date Signed

_____ _____
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) Date Signed