

**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

OnePlanetWeb, Inc.

This Agreement is made this 27th day of November, 2006, in the City and County of San Francisco, State of California, by and between: OnePlanetWeb, Inc., dba JobAps, 322 East Arrellaga Street, Suite B, Santa Barbara, California, 93101, 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 Department of Human Resources ("Department") wishes to obtain a hosted application for web-based job application, recruitment, testing, and certification/referral services; and,

WHEREAS, a Request for Proposal ("RFP") was issued on January 20, 2006, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, Contractor represents and warrants that it is qualified to provide the hosted web-based application and perform the services required by City as set forth under this Agreement; and,

WHEREAS, approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number 4026-06/07 on August 21, 2006;

Now, THEREFORE, the parties agree as follows:

**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 November 27, 2006 to November 26, 2009. City shall have two options to extend, in its sole and absolute discretion, the term of this Agreement for a period of two years each.

**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 to be Provided by the Contractor," attached hereto and incorporated by reference as though fully set forth herein.

**5. Compensation**

In no event shall the amount of this Agreement exceed Two Hundred Fifty Thousand Dollars. Compensation shall be made in accordance with this section and as specified in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In the event that Contractor cannot achieve Acceptance of the System within 60 days following the commencement of Acceptance Testing, it shall be an Event of Default under this Agreement and in addition to any other remedies, City is further entitled to a return of all payments made to Contractor under this Agreement.

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 Department of Human Resources 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.

For each year after the initial three year term of this Agreement, Contractor will continue to provide City with Ongoing Services as described in Appendix A below, provided City first issues a modification to this Agreement pursuant to Section 48 of this Agreement to cover such subsequent years and pays Contractor an annual Ongoing Services charge for the first year after the initial three year term of \$54,164. If there is an increase in Ongoing Services charges for years subsequent to the first year after the initial three year term, Contractor shall give City written notice of such increase at least thirty (30) days prior to the expiration of the immediately previous Ongoing Services year. Annual Ongoing Services charges for such subsequent year(s) shall not increase more than 7.5 % of the rate of the year immediately prior to such increase.

## **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 the Contract Progress Payment Authorization 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; 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 days' advance written notice to City of cancellation mailed to the following address:

**Jamie Austin**  
**Department of Human Resources**  
**44 Gough**  
**San Francisco, CA 94103**

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 do the following: (a) 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, and (b) furnish complete copies of policies promptly upon City request. 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.

## **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 (including without limitation loss of or damage to data) 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 ("Infringement"), of articles or services to be supplied in the performance of this Agreement.

In the event a final injunction is obtained against City's use of the Licensed Software (defined below) by reason of Infringement, or in Contractor's opinion City's use of the Licensed Software is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the Licensed Software as contemplated hereunder, (b) replace the Licensed Software with a non-infringing, functionally equivalent substitute Licensed Software, or (c) suitably modify the Licensed Software to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Licensed Software. If none of these options is reasonably available to Contractor, then the Agreement may be terminated at the option of either party hereto and Contractor shall refund to City all amounts paid 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. Left Blank by the Parties**

**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 business 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 Contractor, 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. Upon termination or expiration of this Agreement, Contractor shall return immediately to City all data imported into the System, provided to Contractor, and/or entered into the System by City and/or any other Authorized User (defined below) in a format commonly read by most software systems and assist the City with the transition of such data to another vendor's software system.

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. City shall return to Contractor copies of all manuals or printed instructions provided to City by Contractor and in City's possession. 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 or its employment applicants and that such information may contain proprietary or confidential details, the disclosure of which to third parties may

be damaging to City and/or such employment applicants. Contractor agrees that all information disclosed to Contractor in the course of its performance of this Agreement 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 and employment applicant information, only disclose such information to its employees, agents and subcontractors with a need to know such information for Contractor's performance of the Agreement, and require such employees, agents and any subcontractors to enter into confidentiality agreements in the form of Appendix D hereto.

City understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, City may have access to private or confidential information which may be owned or controlled by Contractor and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Contractor. Subject to applicable laws, including without limitation, Chapter 67 of the San Francisco Administrative Code and California Government Code §§ 6250 et seq., City shall exercise the same standard of care to protect such information that is not already in the public domain as a reasonably prudent municipal corporation 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:           **Jamie Austin, Finance/Information Systems Director**  
**Department of Human Resources**  
**44 Gough**  
**San Francisco, CA 94103**  
**jamie.austin@sfgov.org**  
**(415) 557-4835 (fax)**

To Contractor:   **Jenna Berg, Ph.D., CEO**  
**322 East Arrellaga Street, Suite B**  
**Santa Barbara, CA 93101**  
**jberg@jobaps.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**

Notwithstanding any other provision of this Agreement, this Section 27 shall not apply to the Licensed Software. 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 three 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 120 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. Disadvantaged Business Enterprise Utilization; Liquidated Damages**

a. The DBE Ordinance

Contractor, shall comply with all the requirements of the Disadvantaged Business Enterprise Ordinance set forth in Chapter 14A of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "DBE 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 DBE 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 provision of the DBE 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 DBE 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 DBE Ordinance, the rules and regulations implementing the DBE Ordinance, or the provisions of this Agreement pertaining to DBE 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 DBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the DBE 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 DBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14A.13(B).

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 DBE 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.

#### **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) 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. Contractor represents that the Licensed Software is deemed to be a “Trade Secret” by Contractor as such term is used in California Government Code Section 6254.7(d). If City receives a public request to view such “Trade Secret,” the City shall use commercially reasonable efforts to notify Contractor of the details of such request, including the requestor’s identity, as available to City and as permitted by law.

#### **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 or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer of the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until the later of either (1) the termination of negotiations for such contract or (2) three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

#### **43. Requiring Minimum Compensation for Covered Employees**

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 <http://www.sfgov.org/oca/lwlh.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. (a) For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of \$10.77 an hour beginning January 1, 2005 and for the remainder of the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of this Agreement.

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

c. Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting



through the Contracting Department, shall determine whether such a breach has occurred.

d. 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, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;

(3) The right to terminate this Agreement in whole or in part;

(4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(5) The right to bar Contractor from entering into future contracts with the City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

e. 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.

f. Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

h. The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

i. The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

j. 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. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. 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.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. 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 (\$50,000 for nonprofits), 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 (\$50,000 for nonprofits) in the fiscal year.

#### **44. Requiring Health Benefits for Covered Employees**

Unless exempt, 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 <http://www.sfgov.org/oca/lwlh.htm>. 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(d) 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(f)(1-5). 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 keep itself informed of the current requirements of the HCAO.

h. 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.

i. 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 five business days to respond.

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

k. 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.

(1) Contractor will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time;

(2) Contractor will comply with requirements for providing timely, appropriate 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;

(3) Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. A Contractor may establish its good faith efforts by filling: 1) its first available Entry Level Position with a job applicant referred through the First Source Program; and, 2) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.

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

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$2,070 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%.

#### **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. Left Blank by Agreement of the Parties**

**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. Nondisclosure of Private Information**

As of March 5, 2005, Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

(a) Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

(i) The disclosure is authorized by this Agreement;

(ii) The Contractor received advance written approval from the Contracting Department to disclose the information; or

(iii) The disclosure is required by law or judicial order.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(d) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against 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. Warranties**

### **a. Right to Grant License**

Contractor hereby warrants that it has title and/or the authority to grant a license of the proprietary computer software programs, and related technical publications, identified on Appendix F, any and all

other programs and publications contained in or provided by Contractor for use with the System (defined below), and all updates, modifications, customizations, configurations, and improvements thereof provided by Contractor to City ("Licensed Software").

b. Conformity to Specifications

Contractor warrants that when the Licensed Software and the System (defined below) are provided for the City's use, they will be substantially free from defects as to design, material, and workmanship and will perform in accordance with the Contractor's specifications for the Licensed Software and the System, respectively, provided by Contractor to City, for the term of this Agreement. Contractor further warrants that the services it provides to City will conform to its published specifications for the services.

c. Warranty of Authority: No Conflict

Each party hereby warrants to the other that it is authorized to enter into this Agreement and that its performance thereof will not conflict with any other agreement.

## 60. Grant of License

Subject to the terms and conditions of this Agreement, Contractor grants City, its employees, officials, contractors, consultants, job applicants, and prospective job applicants (each an "Authorized User" and collectively, "Authorized Users") a non-exclusive and non-transferable limited term license to use the Licensed Software and the System. City acknowledges and agrees that the Licensed Software and the System are the proprietary information and property of Contractor and that this Agreement grants City no title or right of ownership in the Licensed Software or the System.

Contractor agrees that in the event it discontinues its obligations under the terms of this Agreement, except as expressly provided for in Section 21 (Termination for Convenience), or ceases to market and/or provide maintenance and support for the Licensed Software, and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, it will provide City, without charge, one (1) copy of the then-current human readable compileable form of the Licensed Software and related technical publications ("Source Code"). If City should obtain the Source Code pursuant to this section, the only use made of the Source Code will be for the proper maintenance of the Licensed Software in connection with City's use of the Licensed Software as provided for, and limited by, the provisions of this Agreement.

In furtherance of its obligations as stated above, Contractor will provide to the office of the City's Controller a copy of the Source Code which corresponds to the most current version of the Licensed Software. Contractor agrees to update, enhance or otherwise modify such Source Code promptly upon its release of a new version of the Licensed Software to its other licensees such that the Source Code is maintained as corresponding to the newest released version of the Licensed Software. The office of the City's Controller shall maintain such Source Code in locked storage.

City is authorized to use the Licensed Software for its internal purposes only. City agrees that it will, through its reasonable efforts, not permit the Licensed Software to be used in any manner, whether directly or indirectly, that would enable any person or entity other than an Authorized User to use the Licensed Software.

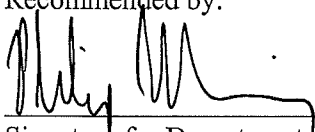


Nothing in this section shall permit or authorize City to allow a representative of a competitor of Contractor, or a non-employee, or an employee who does not need to access to perform their work, to have access to or otherwise view the proprietary aspects of the Licensed Software at any time.

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

CITY

Recommended by:



Signature for Department

PHILIP GINSBURG

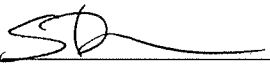
Printed Name

Human Resources Director

Title and Department

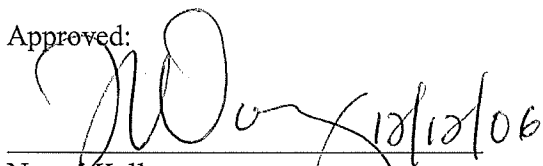
Approved as to Form:

Dennis J. Herrera  
City Attorney

By 

Deputy City Attorney

Approved:



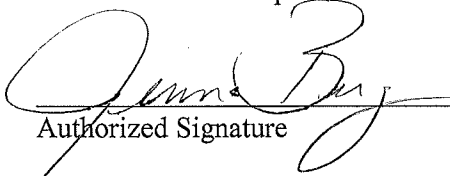
Naomi Kelly

Director of Office of Contract Administration/ Purchaser

CONTRACTOR

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.

  
Authorized Signature

Jenna Berg, PhD  
Printed Name

CEO  
Title

OnePlanetWeb, Inc.  
Company Name

69933  
City Vendor Number

322 E. Arrellaga St. Suite B  
Address

Santa Barbara, CA 93101  
City, State, ZIP

(805) 963-1056  
Phone Number

77-0550009  
Federal Employer ID Number

**APPENDICES**

- Appendix A. Description of Services to be Provided by Contractor
- Appendix B. Calculation of Fees
- Appendix C. Terms of Use Agreement for Applicants
- Appendix D. Confidentiality Agreement
- Appendix E. System Requirements
- Appendix F. Modules of JobAps

## **Appendix A. Description of Services to be Provided by Contractor**

### **Contractor agrees to perform the following services:**

Contractor shall provide to the City a website and web-based Contractor-hosted application that provides human resources services, for an unlimited number of users. Contractor shall customize the System (defined below) to reflect the City's human resources practices; Contractor shall interview City staff to understand the City's functional requirements and configure the System to meet those functional requirements. Contractor shall provide to City use of the Licensed Software as customized, configured and/or designed for City by Contractor, any and all databases and hardware on which such software operates or is hosted, and a website designed and operated by Contractor for City (the "System"). Contractor shall migrate existing City applicant and employee data from various human resources systems, including Sigma, NeoGov, PeopleSoft, and from other City sources, such as the City's compensation tables, into the System. Contractor shall provide to City capacity for scanning resumes, licenses, transcripts, and handwritten City job applications with City-selected sections converted to computer readable data, using a scanning and optical character recognition tool. Contractor shall provide the City capacity to produce standard and ad-hoc reports from data in the System, including recruitment, hiring, Equal Employment Opportunity, and examination scoring reports. Contractor shall train City staff on use of the System and Licensed Software. Contractor will provide ongoing technical support, upgrades to the Licensed Software and the System, patches, and hosting services, as necessary for the optimal performance of the System. Contractor shall also provide the Implementation Support and Ongoing Services described below. Contractor does not provide services for technical support outside of the System including but not limited to: City computer support, City network support, scanning issues related to improper use of scanner and improper use of scanning system, and email tracing.

### **A. System Customization, Implementation, and Training**

**Phase 1: System Analysis and Initial Configuration of Online Employment Center:** Contractor shall install on its servers its Online Employment Center database and database application ("Online Employment Center") and deploy a starter website for City jobs and accepting on-line applications, customized for the City's use. Contractor will begin customization of City's paper job application form, so that it can be scanned and read by the System. The City will purchase a scanner separately.

**Phase 2: Data Upload and Testing for Online Employment Center:** Contractor will spend two days, at least six hours each day, at a City-determined site to meet with City staff to ascertain City human resources processes and use such information, in addition to the System requirements specified in Appendix E, in the design of the System. City will identify types of City data to be used with and for the System, such as, without limitation, data from the following City systems and tables: Sigma, NeoGov, PeopleSoft, Equal Employment Opportunity systems, and compensation tables, job description data, and job posting data. Contractor will receive instructions from City about required System-generated City reports from the City. Contractor shall import City's class specifications, salary information, postings, and applicant and referral data into the System. Contractor shall provide capacity in the System to scan resumes, licenses, transcripts, and paper job application forms as filled out by applicants. Fields of the paper application form selected by City shall be converted to computer-readable data and used to populate appropriate fields in the System, using a scanning and optical character recognition tool. Contractor shall provide a System tool to allow City to import data as it deems necessary. Contractor

shall complete the final design and structure of the Online Employment Center customized to meet the City's requirements in Appendix E.

**Phase 3: Training and Hosted Availability of the Online Employment Center:** Contractor shall provide one instructor for two days of training of City staff, at least seven hours each day, at a City-determined location. Contractor shall import updated referral and final applicant data into the System. Contractor shall provide to City an operational manual or written instructions on how to use the Online Employment Center and scanning tool.

**Phase 4: Configuration of Track and Hire:** Contractor shall design, to meet the City's requirements as specified in Appendix E and to be communicated in writing by City, their Track and Hire software module, which covers applicant tracking, application review, testing and certification/referral processes. Contractor shall develop all required System-generated reports as specified in Appendix E, including without limitation, those for recruitment, hiring, Equal Employment Opportunity, and examination scoring reports. Contractor shall import City's requisition data into the System.

**Phase 5: Training for Track and Hire:** Contractor shall provide one instructor for three days of onsite training of City staff in use of the System, for at least seven hours each day, at a City-determined location. At the City's discretion, the format will be either train-the-trainer or train-the-user classroom, or a combination of these. Contractor shall provide an operational manual or written instructions on how to use Track and Hire.

**Phase 6: Acceptance Testing:** Contractor shall provide to City an acceptance test plan prior to their start of Phase 5. City shall determine in its sole discretion whether to use this acceptance test plan or whether to develop its own acceptance test plan. The City will test the System with multiple scenarios of applicant, scoring and referral data, duplicating City hiring processes. The System must perform to the City's requirements in Appendix E and as communicated in writing during Phases 1-5 and without error. In the event that City determines that the System does not meet such requirements, the City shall notify Contractor in writing and Contractor shall modify or correct the System so that it satisfies the requirements. City will provide Contractor with written notice once Contractor satisfactorily completes Acceptance Testing ("Acceptance").

## **B. Implementation Support**

**Implementation Support:** During the implementation of this project (Phases 1-5), at the City's written request, Contractor will be at the City's location for up to two additional days, for at least six hours a day, beyond the training days and initial meeting (specified in Phases 2-5), to provide onsite implementation support. City will pay Contractor \$3,000 per day for this requested implementation support.

Contractor will provide to City remote online implementation support using "GoToMeeting" for up to twelve hours, free of charge.

## **C. Ongoing Services**

**City's Liaisons with Contractor:** In performing the services provided for in this Agreement, the City's Liaisons with the Contractor shall be John Leon, Mauricio Martinez, Ted Yamasaki, and Jamie Austin. City may add or delete members from this list.

**Support and maintenance:** For the term of this Agreement, Contractor shall maintain the System, including, without limitation: maintaining hosting services; providing technical support for the System; importing subsequent and ongoing imports of data from the City's human resources systems into the System; correcting Licensed Software errors, defects or malfunctions; providing for detection, warning and correction of viruses and disabled/disabling code; and maintaining third-party scanning software provided by Contractor for use with System ("Ongoing Services").

Contractor shall provide technical support concerning the installation and use of the System by email at support@jobaps.com and phone at 1-805-963-1056 from 7 a.m. to 6 p.m. Pacific Standard Time, Monday through Friday, excluding City holidays. Contractor shall also use its best efforts to provide technical support through Contractor's website 24 hours a day, 7 days a week, 365 days a year. Requests for technical support will receive a response within 24 hours from the Contractor, and City Liaison identified urgent technical support issues reported during Normal Business Hours (defined below) will receive a response within two hours from the Contractor. Contractor shall provide 24 hours a day emergency technical support. Requests for emergency technical support will receive an initial response from the Contractor within 5 minutes with updates provided every 30 minutes until resolved. All responses shall be tracked, and City shall receive a report on these responses, if the City requests it.

**Upgrades:** Contractor shall make available to the City, free of charge, any product upgrades that the Contractor makes available to its other customers.

**Data storage and backup:** Contractor shall retain and store all applicant and City data, without limitations. Contractor shall perform nightly backups of such data for the term of this Agreement. Should the Agreement be terminated or expire, Contractor shall immediately return all applicant and City data in a format commonly read by most software systems. Contractor shall assist City with transition of the data to another vendor's software system, should the Agreement be terminated or expire.

Contractor shall ensure that City end-users and potential job applicants are able to enter and/or access information at all times, subject to the provisions of "Accessibility and Downtime" in Appendix A, and in a manner that will not discourage or deter them from completing applications, applying for jobs, or performing job-related duties (i.e., job reporting and analysis, recruitment; referring applicants to City departments) because of poor performance of the System. Poor performance may include, but not be limited to: slow server response time (i.e., greater than 10 seconds as measured at the server), insufficient or unclear form validation or error messages, application-related server error responses (e.g., code 500 Internal Errors), or data loss or corruption.

**Accessibility and Downtime:** Services provided by Contractor will be performed in a professional manner and in accordance with the terms of this Agreement. Contractor shall host the System so that the System is accessible to the City and the public via the Internet 24 hours per day, 7 days per week, except for interruptions due to scheduled maintenance of the System for which City shall have been notified forty-eight (48) hours in advance. In the event of Downtime (defined below) of the System any time from 8 a.m. to 5 p.m., Pacific Standard Time, Monday to Friday ("Normal Business Hours"), excluding City holidays, that exceeds two continuous hours, City shall be due from Contractor one Service Credit (defined below), up to a maximum of 4 Service Credits, per 24-hour period, for every 2 continuous hours the City experiences Downtime. Fractions of an hour may be rounded down to the nearest complete hour. The payment to the Contractor for Ongoing Support will be reduced. A "Service Credit" shall mean an amount equal to the annual rate of Ongoing Services for one (1) day of service (which is \$119.45 based on the \$43,600 recurring annual charge for the first three years; this figure shall increase if the Agreement is extended and the recurring annual charge is increased) . A Service Credit for each additional hour of Downtime shall be due the City if the sum of hours of Downtime during hours outside

of Normal Business Hours exceeds twenty-four hours (24) in any year. Contractor will use its best efforts to schedule maintenance outside of Normal Business Hours.

**Downtime:** Downtime shall mean any interruption of System availability within the control of Contractor or subcontractor for web hosting services to the City or the public, excluding scheduled interruptions for maintenance for which Contractor notifies the City at least 48 hours in advance. Downtime begins upon the City’s notification to Contractor of the interruption either by voice message at 1-805-963-1056 or by e-mail at urgent@jobaps.com. There will be a maximum of four Service Credits per 24-hour period regardless of the nature and timing of the Downtime.

Contractor shall not be responsible for maintaining or supporting City equipment, City connections to the Internet or software provided to City by parties other than Contractor, and scanning issues related to improper use of the scanner and improper use of scanner.

**Services regarding loss of data:** Contractor will have at least one employee available during Normal Business Hours to support the City in restoring any lost data, free of charge, provided that such data was not deleted by City or a job applicant using the System to apply for a job or to view job announcements. This employee will be available until lost data are restored. Contractor must notify City within 24 hours after the loss of data and provide all information regarding loss of data.

**D. Project Schedule:** Contractor shall complete the phases described above in accordance with the following project schedule:

Project Schedule						
Phase	Approximate Completion Date					
		Nov-06	Dec-06	Jan-07	Feb-07	Mar-07
Phase 1: System Analysis and Configuration of Employment Center	November 30, 2006	■				
Phase 2: Data Upload and Testing for Online Employment Center	December 15, 2006		■			
Phase 3: Training and Hosted Availability of the Online Employment Center	January 5, 2007			■		
Phase 4: Configuration of Track and Hire	February 1, 2007			■		
Phase 5: Training for Track and Hire	February 14-28, 2007				■	
Phase 6: Final Acceptance of the System	March 1, 2007					■

**E. Reports**

Contractor shall submit written reports as reasonably requested by the Department of Human Resources. Format for the content of such reports shall be determined by the Department of Human Resources. The timely submission of all reports (not more than three weeks after written request of such report) is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

## Appendix B: Calculation of Charges

Compensation under the Agreement shall be limited to the following:

Schedule of Payments		
Phase #	Phase Name	Payment Amount*
Phase 1	System Analysis and Configuration of Online Employment Center	\$45,000
Phase 2	Data Upload and Testing for Online Employment Center	\$20,000
Phase 3	Training and Hosted Availability of the Online Employment Center	\$37,500
Phase 4	Configuration of Track and Hire	\$20,000
Phase 5	Training for Track and Hire	\$7,500
Phase 6	Final Acceptance of the delivered System	\$22,600

\* Payment is conditioned upon Contractor's successful completion of the relevant phase and, in the case of Phase 6, on Acceptance.

**Ongoing Services:** The annual rate for Ongoing Services is \$43,600 minus any Service Credits due to City as described in Appendix A. Contractor shall invoice City for the first payment for Ongoing Services at a rate of \$43,600 per annum upon its completion of Phase 3. Invoices shall be due and payable within 30 days of receipt. The first payment for Ongoing Services will cover the first year of the term of the Agreement. The second payment for Ongoing Services will cover the second year of the term of the Agreement and the third payment for Ongoing Services will cover the third year of the term of the Agreement.

**Additional training/trainer:** Additional onsite training beyond that included in Appendix A above is \$3,000 per day for one trainer, inclusive of travel and incidental costs. The City and Contractor may negotiate discounts for additional days of training. An additional onsite trainer is available for \$1,500 per day, inclusive of travel and incidental costs.



## Appendix C: Terms of Use Agreement for Applicants

**Terms of Use Agreement for Applicants:** The following Terms of Use Agreement will appear on the City's website, and OnePlanetWeb, Inc., shall obtain the prior written approval of the City to change the Terms of Use Agreement.

The Terms of Use Agreement is as follows:

**Disclaimer:** The City and County of San Francisco, California, is not responsible or in any way liable for any computer hardware or software malfunction that may affect your employment application or the applicant selection process.

### Your Responsibilities as the Applicant

1. Before sending your application to the City and County of San Francisco, it is your responsibility to ensure correctness of all information submitted in the application and to print out a copy of the application in the "Review Part" for your records.
2. You are required to
  - Provide a valid email address.
  - Add [email addresses to be determined by the City] to any spam filter or email blocking software as an accepted address.
  - Verify that the confirmation email delivered upon final submission of your application arrives in your email box within one day after final submission.
  - If you do not receive a confirmation email, it is your responsibility to contact the San Francisco Department of Human Resources. If you fail to do so, your application may not be considered for the opening for which you have applied.
3. It is your responsibility to log in to this system with your UserID and password and review the "My Applications" page to view all notices sent to you for each application for which you have applied. The City and County of San Francisco is not responsible for failed delivery of emails or postal mail.

**Note:** Your application is submitted using secure encryption to ensure the privacy of all information you transmit over the Internet. Cookies must be turned on in your browser in order to use this online application system. Click here for more information about how cookies are used.

## APPENDIX D: Confidentiality Agreement

### ACKNOWLEDGEMENT AND CONFIDENTIALITY AGREEMENT

#### General Information

OnePlanetWeb, Inc. has entered into a contract with the City and County of San Francisco ("City") to provide a hosted application for web-based job application, recruitment, testing and certification/referral services. As part of this contract, OnePlanetWeb, Inc. is required to protect private or confidential information that may be owned, controlled, or disclosed by the City or its employment applicants and to which OnePlanetWeb, Inc. has access. Any OnePlanetWeb, Inc. employee, subcontractor or agent providing services to the City or having access to private or confidential information provided by the City or its employment applicants is required to enter into the Acknowledgement and Confidentiality Agreement ("Confidentiality Agreement") set forth below. Please read the Confidentiality Agreement and take due time to consider it prior to signing.

#### AGREEMENT

##### Nature of Project

I, the undersigned employee, subcontractor or agent of OnePlanetWeb, Inc. understand and acknowledge that OnePlanetWeb, Inc. has entered into a contract with the City and County of San Francisco ("City") to provide a hosted application for web-based job application, recruitment, testing, and certification/referral services (the "Project").

##### Nature of City Confidential Information

I further understand and acknowledge that in connection with the Project, OnePlanetWeb, Inc. its employees, subcontractors and agents will have access to information which may be owned, controlled, or disclosed by the City, its agents, its employees or its employment applicants ("City Confidential Information"). By way of example, City Confidential Information may include, but is not necessarily limited to, (a) identifying data regarding employees or employment applicants (for example, without limitation, applicant names, home addresses or telephone numbers, identifying employment data, age, gender, race or other equal employment opportunity-related information, drivers license information, social security numbers or other identifying designations, job or educational history, criminal history information, and/or financial data); (b) information collected, generated or supplied by the City with respect to an applicant's employment candidacy (for example, without limitation, tests or test results, reference or background information, interview data, rating data, scores, and/or other data reflecting decisions on employment); (c) reports generated or requested by the City in connection with its human resources function; (d) reports generated or requested by the City for the purpose of seeking or carrying out legal advice; (e) information related to the overall security of data entered into, maintained in or transferred from or through the software or other application designed, created, or acquired for the City in connection with the Project (for example, information regarding passwords, access to data, or system design or function which could allow unauthorized users to access identifying data); (f) "Private Information" as defined in Chapter 12M of the San Francisco Administrative Code; and (g) information similar to the information described in (a) through (f) contained in or related to any City human resources systems (whether electronic, computerized or document-based) as to which OnePlanetWeb, Inc. gains access or information in connection with the Project.

No City Employment or Benefits

I further understand and acknowledge that I am not an employee of the City for any purpose and that I do not have and will not acquire any rights or benefits of any kind from the City during the time that OnePlanetWeb, Inc. or I am working on the Project, or performing any services or work related to the Project. I understand and agree that I do not have and will not acquire any rights or benefits pursuant to any contract or agreement between OnePlanetWeb, Inc. and the City.

Preserving and Protecting City Confidential Information

I agree to hold City Confidential Information in the strictest of confidence. I agree not to disclose or use, or induce or assist in the disclosure or use of any City Confidential Information, except as authorized by OnePlanetWeb, Inc. and the City in connection with the Project. I will take reasonable measures to prevent unauthorized persons from having access to, obtaining, or being furnished with any City Confidential Information.

I agree to forward all requests for the release of City Confidential Information received by me to my immediate supervisor. I agree promptly to advise my supervisor of any knowledge that I may have of any unauthorized disclosure or use of City Confidential Information by any other person or by me. I agree to ensure that my supervisor reports such unauthorized disclosure or use to the City Attorney for the City.

I acknowledge and agree that irreparable injury will result to the City and to OnePlanetWeb, Inc. from my violation of any of the terms of this Confidentiality Agreement. I expressly agree that the City and OnePlanetWeb, Inc. each shall be entitled, in addition to damages and any other remedies provided by law, to an injunction or other equitable remedy respecting such violation or continued violation.

I agree that California law will apply to this Confidentiality Agreement. I consent to the exercise of personal jurisdiction over me by the California Superior Court with respect to any dispute arising out of this Confidentiality Agreement. If a court of competent jurisdiction holds any provision of this Confidentiality Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, shall not be affected.

I understand this Confidentiality Agreement continues in effect even after I may cease working on the Project, or terminate employment with OnePlanetWeb, Inc. I agree to return all City Confidential Information to my immediate supervisor upon termination of my employment with OnePlanetWeb, Inc. or upon completion of my work for the Project, whichever occurs first.

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Position/Title \_\_\_\_\_

Date \_\_\_\_\_

## Appendix E: System Requirements

### A. Core System Requirements:

1. The System shall be completely web enabled and customizable.
2. The System shall be accessible by an unlimited number of City end-users and job applicants.
3. The System shall allow the City's departmental users to access applicant or referral data in real time.
4. The City's data and job applicant and employee data, hereafter referred to collectively as "City data," shall reside on a server at the location determined by Contractor and the City's data shall be separate from data for other agencies. Contractor shall have strong internal security features to ensure that only Contractor's authorized employees have access to the database(s) containing the City's data.
5. The System shall integrate with the City's internet/intranet environment. It is required that the System can be assimilated and offered as new functionality from the Department's web site.
6. Contractor shall provide the capacity in the System to scan resumes, licenses, transcripts, and paper job application forms as filled out by applicants. Fields from the City's current paper application form selected by City and approved by Contractor shall be converted to computer-readable data and used to populate appropriate fields in the System, using a scanning and optical character recognition tool.
7. The System shall not require an applicant to submit a Social Security Number in order to process his/her application. The System must generate a unique System-generated ID number for each applicant. In addition, the System must ensure the confidentiality of applicant's personal data.
8. The System shall contain complex security and access provisions for end users as the Department serves many City departments that conduct their own examinations. The System must contain security rules that City Users (Authorized Users who are City employees) may configure to restrict access to exam files and applicant records by department or by end user.
9. The System shall include job certification and referral functions for a large government agency and a comprehensive competitive examination component.
10. The System shall integrate all aspects of the job application process, including recruitment, application submissions, testing, and referral.
11. The System shall generate all required Equal Employment Opportunity and examination scoring reports.
12. The System shall provide integration with existing current human resources systems at the City, including the City's existing PeopleSoft HRMS application (version 7.51).

## Appendix E: System Requirements

### A. Core System Requirements:

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4. The City's data and job applicant and employee data, hereafter referred to collectively as "City data," shall reside on a server at the location determined by Contractor and the City's data shall be separate from data for other agencies. Contractor shall have strong internal security features to ensure that only Contractor's authorized employees have access to the database(s) containing the City's data.
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8. The System shall contain complex security and access provisions for end users as the Department serves many City departments that conduct their own examinations. The System must contain security rules that City Users (Authorized Users who are City employees) may configure to restrict access to exam files and applicant records by department or by end user.
9. The System shall include job certification and referral functions for a large government agency and a comprehensive competitive examination component.
10. The System shall integrate all aspects of the job application process, including recruitment, application submissions, testing, and referral.
11. The System shall generate all required Equal Employment Opportunity and examination scoring reports.
12. The System shall provide integration with existing current human resources systems at the City, including the City's existing PeopleSoft HRMS application (version 7.51).

13. The System shall be customized to mirror the City's processes and conventions for application and certification of referrals and eligibles.
14. The System shall provide City Users the capability to create and save ad-hoc queries and reports for any module and/or data in the System.
15. The System shall perform routine import and export of data, preferably to and from Microsoft Excel.

## **B. Requirements for Online Recruitment Module**

The System shall:

1. Adhere to City-defined data elements and City-required key data fields.
2. Not require job applicants to provide a Social Security Number to enroll. The System should generate an identification number that will be associated with applicant's information.
3. Ensure that there are no problems with more than one user simultaneously executing a function (such as "Enter").
4. Display only those jobs that are open ("Open Job Announcements"). Provide the capability to Authorized Users sort this information by classification or job groupings, for example: All, Accountant, Administration, Professional, Management, Clerical, Technical, Mechanic, Attorney, Supervisory, and Safety, etc.
5. Display data to provide column header tabs. Tabs should be functional and provide the ability to City Users to sort data in ascending/descending order.
6. Provide online forms and instructions, in plain English, at an eighth grade level.
7. Provide applicants the capability to create, save, update, view, and print a generic job application, coursework, supplemental application materials and resume for later retrieval and use to apply for open positions.
8. Provide capability to store, display, and update, as needed, class specifications and salary information.
9. Provide an automated method to City to proactively inform a pre-defined group of applicants that a recruitment position is open. This automated functionality of informing applicants will be based on skill criteria or classification requirement.
10. Provide the City the ability to manage and purge applicant data.
11. Allow the City the ability to set the number of times an applicant may apply to an electronic recruitment.

12. Provide online “Help” capability and mouse-overs, and other features, as required by the Americans with Disabilities Act.
13. Provide an application format that captures City-required recruitment information from each applicant. Entering applicant data shall be a simple and logical process. The System shall request and store the following information from applicants:
  - a. *Supplemental information as necessary*
  - b. *Coursework*
  - c. *Applicant personal information*
  - d. *References*
  - e. *Experience history*
  - f. *Education*
  - g. *Licenses and certificates*
  - h. *Special skills*
  - i. *References*
  - j. *Resume*
  - k. *Open comment*
  - l. *Equal Employment Opportunity*
  - m. *Convictions/restrictions*
  - n. *In addition, the System should restrict one submission per open announcement for each user.*
14. Provide the capability to City Users to designate recruitment information confidential, when necessary, and restrict access to confidential information to designated end users.
15. Provide an automated email to applicants to confirm a successful submission. This email shall contain the date and time that the application was submitted as well as information on the recruitment.
16. Provide the capability for City Users to print applicant data on System-generated forms that resemble recruitment forms.
17. Provide and facilitate the applicant’s ability to acquire free email services from such providers as Yahoo!, Hotmail, AltaVista, etc.
18. Provide City Users the capability to report:

- a. Standard Reports – The System shall produce standard human resources activity reports. At a minimum, the System shall provide the following types of reports:
    - i. Applications submitted by:
      - 1. Day, week, month, quarter, etc.
    - ii. Job announcement numbers
    - iii. Job code numbers
    - iv. Equal Employment Opportunity (EEO) Reports
    - v. Active accounts
    - vi. Inactive account purge reports
19. Allow the City to manage, at a minimum, the following content:
- a. *Recruitment open/close dates*
  - b. *Flexible recruitment posting periods*
  - c. *Continuous recruitment*
  - d. *Setup of automatic recruitment expiration and removal from open job listings*
  - e. *Recruitment date extensions*
  - f. *Recruitment special instructions*
  - g. *Recruitment supplemental*
  - h. *Recruitment job announcements*
20. Contractor shall provide the City the capacity in the System to scan resumes, licenses, transcripts, and paper job application forms as filled out by applicants. Fields of the paper application form selected by Contractor and approved by City shall be converted to computer-readable data and used to populate appropriate fields in the System, using a scanning and optical character recognition tool.
21. Score an applicant's supplemental immediately after submission and notify applicant, whether by e-mail or electronic message displayed in the System, of her score and current disposition. This capability shall be contained within the System; no import function should be used. This functionality may be turned off or on by the City depending on recruitment needs.

**C. Requirements for Examination Module**

- 1. The System shall capture all data elements found in the City's current applicant tracking system.
- 2. The System shall provide capability to expand the number of data elements required for applicants, as needed.
- 3. The System shall provide City Users the capability to correspond via email with applicants regarding all stages of the examination process. The System shall retain a copy of correspondence generated.
- 4. The System shall provide exam planning module for managers to assign and track examinations assignments for recruitment staff. E-mail notification shall be transmitted to City staff when an exam is assigned.
- 5. The System shall score an applicant's supplemental responses and immediately notify applicant, whether by e-mail or electronic message displayed in the System, of her score and disposition. This functionality may be turned off or on by the City depending on the recruitment needs.



6. The System shall provide City Users the capability to batch applicant records by any data field, and update data fields contained in the batch.
7. The System shall provide City Users the capability to scan and score written, performance, oral, or training and experience exams. The System shall be able to provide raw scores, weighted standard scores, and board-weighted standard scores, as needed.
8. The System shall provide a means of electronically forwarding redacted application and applicant supplemental questionnaires to subject matter experts for review and/or rating.
9. The System shall possess a scheduling component for all examination types. The scheduling process shall have the ability to be randomized, and shall include, but not be limited to, the ability to schedule:
  - a. *One or multiple group(s) of applicants for one exam on one day*
  - b. *One or multiple group(s) of applicants for one exam over many days*
  - c. *One or multiple group(s) of applicants for one board on one day*
  - d. *One or multiple group(s) of applicants for multiple boards on the same day*
  - e. *One or multiple group(s) of applicants for multiple boards over many days*
10. For examination scoring purposes, the System shall provide the following reporting requirements:
  - a. *Adverse impact report by exam (pass point analysis)*
  - b. *Adverse impact report by highest achieved score*
  - c. *Descriptive test statistics (including KR 20, etc.) and graphic displays of test results (e.g., histograms and scatter plots)*
  - d. *Item analysis for each question in a written exam (e.g., discrimination index, biserial correlation, difficulty index)*
  - e. *Item analysis by a pre-defined group*
  - f. *Analysis of variance (ANOVA) report*
  - g. *Standardization of exam scores by population mean*
  - h. *Standardization of exam scores by board mean*
  - i. *Report of missing or unread responses*
11. The System shall provide City Users the capability to print redacted applicant data on System-generated forms resembling existing City application forms for applicant review.
12. The System shall provide City Users the capability to convert scores to a specified range.
13. The System shall provide City Users the capability to purge inactive records.

#### **D. Requirements for Online Referral Module**

1. The System shall provide City Users the capability to be modified to reflect the City referral process.
2. The System shall provide integration with the Department's existing PeopleSoft HRMS application to exchange data through automated processes.

3. The System shall provide City Users capability to import amendments made to requisition data in PeopleSoft HRMS, including requisition status and additions/deletions of special conditions.
4. The System shall provide City Users means to change eligibles' status on an eligible list.
5. The System shall provide the capability to compare eligible lists to find individuals:
  - a. With matching last and first names
  - b. With matching applicant IDs (either System-generated or Social Security Number)
6. The System shall provide City Users the ability to generate a referral of eligibles based on the City's certification rules. The System shall provide flexibility to refer eligibles by rank, score, and/or special skill.
7. The System shall generate a unique identification number for each referral, and capture the user who issued the referral, the date referral was created, the number of eligibles referred.
8. The System shall provide City Users the capability to refer eligibles to departments. Each referral shall contain a copy of the eligible's application. The System shall provide the ability to generate referrals in the following manners:
  - a. Issue one referral for a requisition in one job code specific to one department.
  - b. Issue one referral for many requisitions in one job code to one department.
  - c. Issue one referral for many requisitions in one job code to many departments. (In this instance, multiple copies of the same referral are created based on the number of departments with open requisitions. Each department included in the referral would receive a copy of the referral.)
9. The System shall provide capability to indicate reachable and alternate eligibles on a referral.
10. The System shall provide a "Notes" section where special instructions can be given to departments regarding the referral.
11. The System shall provide automated email notifying department(s) upon successful completion of referral.
12. The System shall provide capability to assign completion date of 45 days after issuance of referral.
13. The System shall provide capability to amend or purge referrals.
14. The System shall provide capability for departments to notify eligibles via e-mail and/or printed letter that a referral has been issued.
15. The System shall provide capability for departments to track eligibles' status on the referral as they proceed through the selection process. The System shall capture an eligible's response to referral notification, eligible inclusion in interview process, and final department selection.
16. The System shall provide an automated email notifying the City that referral/selection is complete.
17. The System shall provide reporting capability:

- a. Standard Reports: System shall produce standard referral activity reports. Information on reports shall include, but not be limited to: eligible name, eligible ID number, eligible disposition, eligibility end date, requisition number, department requisition number, department number, department code, job code number, requisition status, work location, work week, work schedule, and special conditions.

18. The System shall provide the following reports:

- a. Referrals issued daily, weekly, monthly, quarterly, etc.
- b. Referrals issued by staff
- c. Referrals issued by Job Code Number
- d. Referrals issued to departments
- e. Completed referrals.

#### **E. System Security, Data Redundancy, Reliability, and Internet Connection**

1. The City data shall be maintained in a discrete database, separate from those of the Contractor's other customers, to ensure data security. In addition, Contractor shall ensure that data are backed up daily and offsite to allow a minimal loss of information, and preferably have a Hotsite to minimize the time to complete start up after System failure or disaster. The System shall provide the capability to send supplemental backup copies to the City, at the City's request. In addition, the System shall have an ICSA-certified firewall with secure sockets layer data encryption.
2. The Contractor shall use reasonable methods to prevent against power outages and fire. In addition, the Contractor's data center shall comply under all seismic rating certifications.

#### **F. System Testing, Audit Trail and Security**

1. Both the City's and the Contractor's systems administrators shall be able to manage user accounts and user access levels and reset passwords in real time.
2. The System shall be able to track each successful and unsuccessful user login and logout.
3. The System shall use a combination of User ID, Password and Access level function authority. The System shall allow multiple users to be managed under a single group for purposes of account and security administration.
4. The System shall ensure that all City data is protected against unauthorized access and corruption of data.

