

**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

**Macias Gini & O’Connell LLP
Contract ID 1000028451**

This Agreement is made this First day of July, 2023, in the City and County of San Francisco (“City”), State of California, by and between Macias Gini & O’Connell LLP, 2121 N. California Blvd., Suite 750, Walnut Creek, CA 94596 (“Contractor”) and City.

Recitals

WHEREAS, the Controller’s Office (“Department”) wishes to obtain independent auditing and accounting services to comply with City Charter 2.115 and California Government Code Sections 25250 and 25253, which require the City to have annual audits performed by independent public accounting firms for the following entities and areas from Contractor:

- Group 1: The City’s Annual Comprehensive Financial Report (“ACFR”), General City, Single Audit, and other funds
- Group 2: San Francisco Employees’ Retirement System
- Group 3: Office of Community Investment and Infrastructure (Successor Agency to the San Francisco Redevelopment Agency)
- Group 4: San Francisco Health Service System Other Employment Benefit Trust Fund
- Group 6: Port of San Francisco
- Group 7: San Francisco Finance Corporation
- Group 10: Various State of California Project Grants
- Group 11: City and County of San Francisco Retiree Health Care Trust Fund (Post-Employment Health Benefits)

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

WHEREAS, Contractor was competitively selected pursuant to Sourcing Event ID 0000006715; and

WHEREAS, this is a contract for Services and there is a Local Business Entity (“LBE”) subcontracting participation requirement with respect to the Services, as defined further herein; and

WHEREAS, approval for the Agreement was obtained on March 6, 2023 from the Civil Service Commission under PSC number 43203-22/23 in the amount of \$27,000,000 for the period commencing April 1, 2023 and ending June 30, 2031; and

WHEREAS, the City’s Board of Supervisors approved this Agreement by [insert resolution number] on [insert date]

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Agreement” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and the “Controller’s Office.”

1.3 “City Data” means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

1.4 “CMD” means the Contract Monitoring Division of the City.

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

1.6 “Contractor” or “Consultant” means Macias Gini & O’Connell LLP, 2121 N. California Blvd., Suite 750, Walnut Creek, CA 94596.

1.7 “Deliverables” means Contractor’s work product resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Statement of Work” attached as Appendix A.

1.8 “Mandatory City Requirements” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.9 “Party” and “Parties” means the City and Contractor either collectively or individually.

1.10 “Services” means the work performed by Contractor under this Agreement as specifically described in the “Statement of Work” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on July 1, 2023 and expire on June 30, 2027, unless earlier terminated as otherwise provided herein.

2.2 The City has options to renew the Agreement for a period of up to three (3) additional years. The City may extend this Agreement beyond the expiration date by exercising an option at the City’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

Article 3 Financial Matters

3.1 **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.

3.2 Guaranteed Maximum Costs. The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 Calculation of Charges. Contractor shall provide an invoice to the City on a monthly basis for goods delivered and/or Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for goods and/or Services identified in the invoice that the City, in his or her sole discretion, concludes has been satisfactorily performed. In no event shall the amount of this Agreement exceed six million eight hundred six thousand four hundred and twenty-four dollars and no cents (**\$6,806,424.00**), ("Guaranteed Maximum Price" or "GMP"). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." A portion of payment may be withheld until conclusion of the Agreement if agreed to by both Parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any services covered by this Agreement.

3.3.2 Payment Limited to Satisfactory Services and Delivery of Goods. Contractor is not entitled to any payments from City until City approves the goods and/or Services delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory delivery of goods and/or Services even if the unsatisfactory character may not have been apparent or detected at the time such payment was made. Goods and/or Services delivered pursuant to this Agreement 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 at no cost to the City.

3.3.3 Withhold Payments. If Contractor fails to provide goods and/or Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of goods delivered or Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.5 LBE Payment and Utilization Tracking System. If LBE Subcontracting Participation Requirements apply to a Contract awarded pursuant to this Solicitation, the Awarded Contractor shall: (a) Within three (3) business days of City's payment of any invoice to

Contractor, pay LBE subcontractors as provided under Chapter 14B.7(H)(9); and (b) Within ten (10) business days of City's payment of any invoice to Contractor, confirm its payment to subcontractors using the City's Supplier Portal Payment Module, unless instructed otherwise by CMD. Failure to submit all required payment information to the City's Supplier Portal Payment Module with each payment request may result in the withholding of 20% of subsequent payments due. Self-Service Training is located at this link: <https://sfcitypartnersfgov.org/pages/training.aspx>.

3.3.6 Getting paid by the City for Goods and/or Services.

(a) The City and County of San Francisco utilizes the Paymode-X[®] service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit http://portal.paymode.com/city_countyofsanfrancisco.

(b) At the option of the City, Contractor may be required to submit invoices directly in the City's financial and procurement system (PeopleSoft) via eSettlement. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through sfemployeeportalsupport@sfgov.org.

3.3.7 Reserved. (Grant Funded Contracts)

3.3.8 Payment Terms.

(a) **Payment Due Date:** Unless City notifies the Contractor that a dispute exists, Payment shall be made within 30 calendar days, measured from (1) the delivery of goods and/or the rendering of services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted electronic payment to Contractor.

(b) Reserved. (Payment Discount Terms)

3.3.9 Contract Amendments; Budgeting Revisions.

(a) **Formal Contract Amendment.** Contractor shall not be entitled to an increase in the Guaranteed Maximum Price or an extension of the term of this Agreement unless the Parties mutually agree to a formal amendment in accordance with the San Francisco Administrative Code and Section 11.5 (Modification of this Agreement).

(b) **City Revisions to Program Budgets.** The City shall have authority, without the execution of a formal amendment, to purchase additional Services within the Statement of Work and/or make changes to the Services within the Statement of Work, in accordance with the terms of this Agreement (including such terms that require Contractor's mutual agreement), not involving an increase in the Guaranteed Maximum Price or the term of this Agreement, by use of a written Appendix F, "Change Order Request Template." All Change Orders must be approved, in writing, by the Parties. Contractor shall not proceed with any work contemplated in any Change Order until it receives written notification to commence such work from City. All Agreement Change Orders will become part of the Agreement, after written execution by the Parties, which will then form the new baseline upon which future changes will be measured.

3.4 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 Services. 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 seven 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 as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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.

3.6 Reserved. (Payment of Prevailing Wages)

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services stated in Appendix A, "Statement of Work." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.2 Personnel

4.2.1 Qualified Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 Subcontracting.

4.3.1 Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 “Additional Requirements Incorporated by Reference” of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.3.2 City’s execution of this Agreement constitutes its approval of the subcontractors listed below.

Kevin W. Harper CPA & Associates
Lamorena & Chang, CPA
Calvin Y. Louie, CPA

4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.4.1 **Independent Contractor.** For the purposes of this Section 4.4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, 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, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. 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. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this Section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by

Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment 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 this Section 4.4 shall be solely limited to 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, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this Section.

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

4.6 Warranty. Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 **Required Coverages.** 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:

(a) Commercial General Liability Insurance with limits not less than **\$2,000,000** each occurrence and **\$4,000,000** for Aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) 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.

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

(d) Professional Liability Insurance, applicable to Contractor's profession, with limits not less than **\$5,000,000** for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Cyber and Privacy Insurance with limits of not less than **\$5,000,000** per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

(f) **Reserved. (Pollution Liability Insurance)**

5.1.2 Additional Insured Endorsements

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) **Reserved. (Pollution Auto Liability Insurance Additional Insured Endorsement)**

5.1.3 Waiver of Subrogation Endorsements

(a) The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

5.1.4 Primary Insurance Endorsements

(a) The Commercial General Liability policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) **Reserved. (Pollution Liability Insurance Primary Insurance Endorsement)**

5.1.5 Other Insurance Requirements

(a) Thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 entitled "Notices to the Parties."

(b) 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 Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) 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.

(d) 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.

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

5.2 Indemnification. Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of

local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises 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, 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. City shall give Contractor prompt notice of any claim covered by the foregoing indemnification provisions and Contractor shall have the right to defend, settle and compromise any such claim except that Contractor shall seek City's prior written consent to settle or compromise any claim if Contractor contends City also share in any liability.

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 arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," 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.

6.2 Liability for Use of Equipment. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 **Liability for 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.

Article 7 Payment of Taxes

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 **Possessory Interest Taxes.** Contractor acknowledges 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:

7.2.1 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.

7.2.2 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.

7.2.3 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.

7.2.4 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.

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

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 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.

8.1.2 Upon receipt of the notice of termination, 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 may include any or all of the following, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) 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.

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

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

(f) 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.

8.1.3 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:

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services 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. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

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

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

(d) 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.

8.1.4 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 listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under 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 Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

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

8.2 Termination for Default; Remedies.

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

8.2.2 Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment	11.10	Compliance with Laws
Article 5	Insurance and Indemnity	Article 13	Data and Security
Article 7	Payment of Taxes		

(a) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(b) Contractor (i) is generally not paying its debts as they become due; (ii) 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; (iii) makes an assignment for the benefit of its creditors; (iv) 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 (v) takes action for the purpose of any of the foregoing.

(c) A court or government authority enters an order (i) 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, (ii) 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 (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.3 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, where applicable, 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: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City. This Section 8.2.2 shall survive termination of this Agreement.

8.2.4 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. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.5 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.3 **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.

8.4 **Rights and Duties upon Termination or Expiration.**

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	9.1	Ownership of Results
3.3.7(a)	Grant Funded Contracts – Disallowance	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	Article 13	Data and Security

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Except for Contractor’s Audit Documentation, as defined herein below which shall remain the exclusive property of Contractor, 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. “Audit Documentation” shall mean all records related to the Agreement, excluding financial records that report Contractor’s professional hours and expenses, that are required by professional standards or Contractor’s internal policies to support the services performed under the Agreement. Examples of Audit Documentation are audit programs, analysis, memoranda, letters of confirmation and representation, extract or copies of City documents, and schedules or commentaries prepared by or obtained by Contractor. Audit Documentation may be in paper form, electronic form, or other media.

Article 9 Rights In Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents, with the exception of Audit Documentation as defined in Section 8.4.2, prepared by Contractor or its subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any

other format, 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 shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

10.2 Conflict of Interest. By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements.

10.5.1 **Nondiscrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. 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 employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 **Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least 10% of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor’s LBE subcontracting commitments.

10.7 **Minimum Compensation Ordinance.** If Administrative Code Chapter 12P applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

10.8 **Health Care Accountability Ordinance.** If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. 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. Information about and the text of the Chapter 12Q, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.9 **First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that

apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

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

10.12 Slavery Era Disclosure. Contractor shall comply with San Francisco Administrative Code Chapter 12Y, San Francisco Slavery Era Disclosure Ordinance, including but not limited to Contractor's affirmative duty to research and disclose evidence of Contractor, its parent or subsidiary entity, or its Predecessor Company's Participation in the Slave Trade or receipt of Profits from the Slave Trade. Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.

10.13 Reserved. (Working with Minors)

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this

Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Reserved. (Public Access to Nonprofit Records and Meetings)

10.16 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 Reserved. (Distribution of Beverages and Water)

10.18 Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.19 Reserved. (Preservative Treated Wood Products)

Article 11 General Provisions

11.1 Notices to the Parties. Unless otherwise indicated in this Agreement, all written communications sent by the Parties must be by e-mail, and shall be addressed as follows:

To City: **Central Contracts
Controller's Office
1 Dr. Carlton B. Goodlett Place, Room 306
San Francisco, CA 94102
centralcontracts@sfgov.org**

To Contractor: **Annie Louie
Macias Gini & O'Connell LLP
212 N. California Blvd., Suite 750,
Walnut Creek, CA 94596
alouie@mgocpa.com**

Any notice of default must be sent by email. If email notification is used, the sender must specify a receipt notice.

11.2 **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and 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 CMD 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% (CMD Contract Modification Form).

11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

11.6.2 **Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.7 **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.

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

11.9 **Entire Agreement.** This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 **Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules 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.

11.11 **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 (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) 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.

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

11.13 **Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated April 25, 2022. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

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

requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

Article 12 Department Specific Terms

12.1 Reserved.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

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

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

13.2 Reserved. (Payment Card Industry (“PCI”) Requirements

13.3 Business Associate Agreement. This Agreement may require the exchange of information covered by the U.S. Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). A Business Associate Agreement (“BAA”) executed by the Parties is attached as Appendix H.

13.4 Management of City Data and Confidential Information.

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

or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.4.2 Disposition of Confidential Information. Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all data given to or collected by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

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

Article 14 MacBride And Signature

14.1 MacBride Principles - Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

CITY

CONTRACTOR

Recommended by:

Macias Gini & O'Connell LLP

Deputy Controller
Controller's Office

City supplier number: 0000015943

Approved as to Form:

David Chiu
City Attorney

By: _____

Deputy City Attorney

Approved:
Sailaja Kurella
Director of the Office of Contract Administration,
and Purchaser

By: _____

Appendices

- A: Statement of Work
- B: Calculation of Charges
- C: Audit Timing
- D: Auditor Engagement Letter
- E: Invoice Sample Template
- F: Change Order Request Template
- G: Sample Deliverable Acceptance Form Template
- H: Business Associate Agreement
- I: Business Associate Agreement for Health Service System

Appendix A Statement of Work

This statement of work is a general guide to the work the City expects to be performed, and is not a complete listing of all required or desired services.

1. OVERVIEW OF SERVICES

Under the City and County of San Francisco Charter (City Charter), the Controller serves as the chief fiscal officer of the City and County of San Francisco (City).

In compliance with City Charter Section 2.115 and California Government Code Sections 25250 and 25253, the City is required to have its annual financial statement audits performed by independent public accounting firms.

City Charter Section 9.117 calls for the establishment of an Audit Committee of the Board of Supervisors (Committee). The Board of Supervisors Government Audit and Oversight Committee serves as that Committee. The role of the Committee is to:

- a) Maintain a direct and separate line of communication between the Board of Supervisors and the independent auditor;
- b) Meet with the independent auditor to review the audited annual financial statement and the auditor's report on such matters as the quality and depth of management and compliance;
- c) Recommend appropriate action to be taken by the Board of Supervisors to implement recommendations contained in the audit report;
- d) Follow up, as necessary, to ensure that approved recommendations are promptly implemented; and
- e) Perform other duties as assigned by the Board of Supervisors.

Upon completion of the annual audits, the Annual Comprehensive Financial Report (ACFR) and corresponding management letters are provided to the Committee by the Controller's Office.

2. ROLES AND RESPONSIBILITIES

2.1 In performing the services provided for in this Agreement, Contractor's Project Manager will be Annie Louie. The Controller's Office Project Manager will be Carmen LeFranc or Jocelyn Quintos.

2.2 Through the services and deliverables required under this Agreement, the Contractor shall be expected to successfully meet all audit staffing, timeline, budget, and work product goals and objectives on an annual basis for the term of the Agreement. The Contractor's Project Manager (Annie Louie) shall manage the Contractor's Team to ensure that it completes all work and obligations described in this Agreement.

2.3 The Controller's Office Project Manager, in coordination with reporting entity (City Department) representatives, will oversee the work of the Contractor, handle all contract administration matters and approve contract payments.

2.4 The Controller's Office Project Manager, in his/her sole discretion, has the right to approve or disapprove Contractor's personnel assigned to perform the services under this Agreement at any time throughout the term of this Agreement. The City shall have the right to interview and review the qualifications of any new personnel proposed by the Contractor. Any change to Contractor's managerial (from partner through senior level) personnel must be approved in writing by the City at least fourteen (14) days in advance of assignment of such personnel by the Contractor. Such approval by the City shall not be unreasonably withheld. The Controller's Office Division Director shall have the discretion to re-assign the staffing for the City's Project team including Controller's Office Project Manager. The Controller's Office Division Director and Controller's Office Project Manager shall have the authority to release purchase order funds for the contract.

2.5 For remote access, City will provide VPN connection. Contractor must provide cell phone number for identity authentication and supervisor contact.

2.6 The City assumes that financial statements and notes will be developed by the City. The Contractor may then be asked to produce the final published financial statements.

2.7 In its sole and absolute discretion, the City will make appropriate staff available to provide assistance to the Contractor. Such assistance may include coordinating the audit field work, identifying locations of required records and documentation, preparing and/or obtaining listings of account balances/transactions, providing reasonable detailed analysis and reconciliation of various accounts being audited and other such tasks which will serve to speed the conduct of the services.

2.8 The City expects that the Contractor will use the City's online financial system to the fullest extent possible to research transactions and analyze account balances in conjunction with their audits.

2.9 The Controller's Office Audits Division may make its internal audit reports available to Contractor and will, to the extent possible, provide staff resources if, in the City's sole and absolute discretion, critical problems are identified by the Contractor, which require staff resources beyond the scope of this Agreement.

2.10 The Contractor shall serve as the City's principal auditor and make reference to the work performed by the other audit firms in their audit opinion on the City's basic financial statements.

3. SUMMARY OF SERVICE GROUPS

The Contractor shall perform annual audits of the financial statements for the following service Groups (also known as reporting entities or components) for fiscal year ending June 30, 2023,

June 30, 2024, June 30, 2025, and June 30, 2026, after which time the City may exercise options for renewal to perform annual audits of the financial statements for up to the three fiscal years ending June 30, 2027, June 30, 2028, and June 30, 2029.

- Group 1 Annual Comprehensive Financial Report (“ACFR”), General City, Zuckerberg San Francisco General Hospital and Trauma Center Laguna Honda Hospital, Single Audit, and Other Funds – Treasure Island Development Authority (“TIDA”)
- Group 2 San Francisco Employees’ Retirement System
- Group 3 Office of Community Investment and Infrastructure (Successor Agency to the Redevelopment Agency of the City and County of San Francisco)
- Group 4 San Francisco Health Service System Other Employment Benefit Trust Fund
- Group 6 Port of San Francisco
- Group 7 San Francisco Finance Corporation
- Group 10 Various State of California Project Grants
- Group 11 City and County of San Francisco Retiree Health Benefit Trust Fund

More details regarding the services specific to each Group are in subsequent sections of this Appendix.

4. ANNUAL GRANT AUDIT SERVICES

The Contractor shall provide annual grant audit services, as determined by the City, as follows:

Coordinate the planning and development of audit procedures and testing methods, review these methods with the City’s other Contractors and/or the Controller’s Office, and, if deemed necessary by the City, review these methods with the granting agencies. Examination of non-governmental secondary recipients is specifically excluded from this Agreement. The Contractor shall assist the City in responding to inquiries from the governmental agencies on issues related to the audits for which they are responsible.

5. ANNUAL FINANCIAL STATEMENT AUDIT SERVICES

The Contractor shall provide annual financial statement audit services, as determined by the City, for each Group covered by this Agreement as follows:

5.1 Conduct annual financial statement audit services in accordance with generally accepted auditing standards and requirements as promulgated by American Institute of Certified Public Accountants (AICPA), the Governmental Accounting Standards Board (GASB), the

Single Audit Act Amendments of 1996, and the Federal Office of Management and Budget (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* set forth in Title 2 CFR, Subtitle A, Chapter II, Part 200 (Uniform Guidance) (if applicable), and related pronouncements with the objective of having the Contractor express an independent opinion regarding the financial position, changes in financial position and cash flows, where applicable, of the Groups (financial statements) covered by this Agreement.

5.2 Report on internal control related to the financial statements and compliance with applicable major federal programs, laws, regulations, and requirements (including Statement on Auditing Standards 115), as well as the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with the Single Audit Act Amendments of 1996, OMB Uniform Guidance (if applicable) and related governmental audit standards and pronouncements.

5.3 Ensure its examinations comply with the requirements of the Single Audit Act Amendments of 1996 and OMB Uniform Guidance (if applicable) and related pronouncements, relating to the Federal award programs listed in the City's and the Successor Agency's Schedules of Expenditures of Federal Awards.

5.4 Coordinate the planning and development of audit procedures and testing methods, review these methods with the City's other Contractors and/or the Controller's Office, and, if deemed necessary by the City, review these methods with the Federal cognizant agency. Examination of non-governmental secondary recipients is specifically excluded from this Agreement. The Contractor shall assist the City in responding to inquiries from the Federal agencies on issues related to the audits for which they are responsible.

5.5 Review the Annual Reporting Package (ARP), if provided by the reporting entity for submission to the Controller's Office to assist in the preparation of the City's Annual Comprehensive Financial Report (ACFR).

5.6 Analyze the differences between the Generally Accepted Accounting Procedures (GAAP) basis and the budget basis of accounting and of the components of the budget basis fund equity.

5.7 Issue reports on the San Francisco Employees' Retirement System, the Port of San Francisco, and the San Francisco Finance Corporation's basic financial statements based on the examination of the individual opinion units. These financial statements shall include such explanatory footnotes as considered necessary to disclose all material items. All reports shall be issued in accordance with the timelines developed in the City's closing schedule. Approximate key dates are listed below in Section 8, Timing of the Work.

5.8 Issue a report on the Successor Agency to the Redevelopment Agency's financial statements. The financial statements, and all related reports, shall:

- i. Include the basic financial statements;

- ii. Include explanatory footnotes as considered necessary to disclose all material items; and
- iii. Be issued in accordance with the timelines developed in the City's closing schedule, as detailed below in Section 8, Timing of the Work.

5.9 Issue a report on the examination of the basic financial statements of the Health Service System. The report shall include the financial statements customarily associated with the Health Service System. The financial statements shall include such explanatory footnotes as considered necessary to disclose all material items. All reports shall be issued in accordance with the timelines developed in the City's closing schedule.

5.10 Perform certain agreed-upon procedures relating to the City's calculation of its appropriations limit in accordance with Article XIII B of the California Constitution. The Contractor shall provide a report documenting the results of the agreed-upon procedures.

5.11 Work with the Controller's Office and reporting entities covered by this Agreement to address any critical reporting issues and to review the format of the financial statements to ensure compliance with or implementation of new Governmental Accounting Standards Board Statements.

5.12 The Controller's Office and/or reporting entities may use the Contractor's opinion on the basic or on individual financial statements, as applicable, when the Contractor is not associated with the official statements for public debt issuance provided that the Controller's Office and/or reporting entities reproduces the entire document associated with the Contractor's opinion and includes the following statement in the offering document:

Macias Gini & O'Connell LLP, our independent auditor, has not been engaged to and has not performed any procedures subsequent to the date of their report related to the financial statements included herein nor performed any procedures related to this offering document.

6. MANAGEMENT LETTERS

In conjunction with the annual financial audits, the Contractor shall prepare a management letter for all Groups covered by this Agreement per Appendix D of this Agreement.

7. GENERAL APPROACHES TO WORK

The key element of effective audit planning is a thorough understanding of the City's operations. This includes operating environment, accounting and internal accounting control structure, and financial operations. The Contractor shall develop a detailed understanding of these elements to effectively identify the nature of significant account balances/transaction classes, assess risk, and design audit tests.

The Contractor's specific approaches to the services under this Agreement are described in Appendices D to this Agreement.

8. GROUPS

In addition to the services and approaches described in Sections 4, 5, 6 and 7, the Contractor shall provide services specified for the groups under this Agreement, as detailed below.

8.1 Group 1: Annual Comprehensive Financial Report (“ACFR”): General City, Zuckerberg San Francisco General Hospital and Trauma Center, Laguna Honda Hospital, Single Audit, and Other Funds – Treasure Island Development Authority (“TIDA”)

Group 1 shall include the audit of the General City, ACFR, Single Audit, and other funds for the four fiscal years ending June 30, 2023, 2024, 2025, and 2026, after which time the City may exercise options for renewal for the three fiscal years ending June 30, 2027, 2028, and 2029.

The Contractor shall perform examinations of the individual financial statements of the various reporting entities of the City in accordance with generally accepted auditing standards as promulgated by the AICPA and the GASB with the objectives of expressing an opinion on the financial statements.

The Contractor shall perform the procedures necessary to ensure that the reporting entities may use the Contractor’s opinion on the general purpose financial statements in connection with any official statements for public debt issuance. The City and/or its independent financial reporting entities will negotiate separately any fees for services beyond the usage of the Contractor’s audit opinion.

Examinations shall comply with the requirements of the Office of Management and Budget (“OMB”) Administrative Requirements, Cost Principals, and Audit Requirements for Federal Awards, also known as the “Super Circular”, and related pronouncements relating to the Federal assistance programs listed in the City’s Schedule of Expenditures of Federal Awards. Each selected Contractor shall coordinate the planning and development of testing methods, review these methods with the Controller’s Office and, if deemed necessary by the City, review these methods with the Federal cognizant agency.

Examination of non-governmental secondary recipients is specifically excluded. The Contractor shall assist the City in responding to inquiries from the Federal agencies on issues related to the audits for which they are responsible.

The Contractor shall perform certain agreed-upon procedures relating to the City’s calculation of its appropriation limit in accordance with Article XIII B of the California Constitution. The Contractor(s) shall provide a letter documenting the results of the agreed-upon procedures.

1. General City – General City refers to the City’s Governmental Funds and all Internal Service Funds except the San Francisco Finance Corporation.

2. Annual Comprehensive Financial Report – The City issues an Annual Comprehensive Financial Report (“ACFR”). The ACFR is prepared according to the financial reporting requirements of the Governmental Accounting Standards Board (“GASB”), Basic Financial Statements – and Management’s Discussion and Analysis (“MD&A”) – for State and Local Governments (“GASB”).

This report is divided into three sections:

- The *Introductory Section* includes information about the organizational structure of the City, the City’s economy, major initiatives, status of City services, etc.
- The *Financial Section* is prepared in accordance with the GASB requirements, including MD&A, the Basic Financial Statements including notes and the Required Supplementary Information. The Basic Financial Statements include the government-wide financial statements that present an overview of the City’s entire financial operations and the fund financial statements that present the financial information of each of the City’s major funds, as well as non-major governmental, fiduciary and other funds. Also included in this section is the Independent Auditors’ Report on the basic financial statements.
- The *Statistical Section* includes tables containing historical financial data, debt statistics, and miscellaneous social and economic data of the City that are of interest to potential investors in our bonds and to other readers. The data includes ten-year revenue and expenditure information on an inflation-adjusted basis.

The Contractor shall perform an examination of the combined financial statements of the City in accordance with generally accepted auditing standards as promulgated by the AICPA with the objectives of expressing an opinion on the general purpose financial statements. The Contractor shall also assist the City in meeting the requirements of the Government Finance Officers Association’s (“GFOA’s”) Certificate of Achievement for Excellence in Financial reporting program for the ACFR.

Examinations shall include those entities as set forth in the 2021 ACFR, which are required to be included in the City’s financial statements in accordance with the Governmental Accounting Standards Board Section 2100 “defining the reporting entity”.

The financial entities included in Groups 2-10 are included in the City’s ACFR. It is assumed that entities in Groups 2-10 may be audited by firms other than the Contractor selected for Group 1.

In past years, auditors audited or reviewed all of the financial statements included in the City’s ACFR and have expressed an unqualified opinion upon their respective statements. A Certificate of Achievement for Excellence in Financial Reporting has been presented to the City by the

Government Finance Officers Association (“GFOA”) for the ACFR. The City will submit the ACFR annually to the GFOA for purposes of evaluation.

3. Single Audit – The number of programs and thresholds are subject to change, and should be audited according to OMB updates.

4. Other Funds - Treasure Island Development Authority (“TIDA”) Fund – TIDA is a nonprofit public benefit corporation. TIDA was authorized in accordance with the Treasure Island Conversion Act of 1997 and designated as a redevelopment agency pursuant to Community Redevelopment Law of the State of California. TIDA is governed by seven commissioners who are appointed by the Mayor, subject to confirmation by the City’s Board of Supervisors. The specific purpose of TIDA is to promote the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the property known as Naval Station Treasure Island. This non-enterprise entity is included in the City’s ACFR as a discretely presented component unit.

5. Zuckerberg San Francisco General Hospital and Trauma Center and Laguna Honda Hospital

5.1 The General Hospital Medical Center Fund is an Enterprise Fund established on July 1, 1980, pursuant to the Board of Supervisors Resolution No. 865-81. The accounting and reporting system for San Francisco General Hospital Medical Center is in accordance with Government Code Section 25261 and the Hospital Disclosure Act, Health and Safety Code Sections 440-442.10. San Francisco General Hospital Medical Center is an acute care hospital.

5.2 The Laguna Honda Hospital Fund is an Enterprise Fund established on July 1, 1983. Accounting and reporting systems are in compliance with the Hospital Disclosure Act, Health and Safety Code Sections 440-442.10. Laguna Honda Hospital is an acute care hospital and skilled nursing facility.

8.2 Group 2: Employees Retirement System

The City Charter provides for this defined benefit pension plan, which covers substantially all employees of the City and County of San Francisco and certain classified employees of the San Francisco Community College and Unified School Districts. This non-enterprise entity is reported in the City’s ACFR as a Pension and Other Employee Benefit Trust Fund.

8.3 Group 3: Office of Community Investment and Infrastructure (Successor Agency to the San Francisco Redevelopment Agency)

The report issued for the OCII must include the Single Audit Report, if required by the City. In addition to the audit of the basic financial statements of the Successor Agency, the report issued for the Successor Agency must include any Supplementary Information, and the Single Audit Report (if applicable).

8.4 Group 4: San Francisco Health Service System Other Employment Benefit Trust Fund

The Health Service System was established in 1937 by City Charter and provides health care benefits to substantially all active and retired City employees and is partially funded by the City. This non-enterprise entity is reported in the City's ACFR as a Pension and Other Employee Benefit Trust Fund

8.5 Group 6: Port of San Francisco (Port)

In 1968, the City voters approved a proposition to accept the transfer of the Harbor of San Francisco from the State of California under the terms and conditions set forth in California Statutes of 1968, Chapter 1333. An Enterprise Fund was established in 1969, under the direction of the Port Commission. A five-member Port Commission is responsible for the operation, development and maintenance of the Port.

8.6 Group 7: San Francisco Finance Corporation

The San Francisco Finance Corporation (Finance Corporation) was created in 1990 by a vote of the electorate to allow the City to lease-purchase \$20 million (plus 5% per year growth) of equipment using tax-exempt obligations. The funds of the Finance Corporation are held with a third party trustee. Although legally separate from the City, the Finance Corporation is reported as if it were part of the primary government because its sole purpose is to provide lease financing to the City. This non-enterprise entity is accounted for as an Internal Service Fund.

8.8 Group 10: State of California Project Grants for DOI, LTF and TDA

Currently includes State of California Department of Insurance ("DOI") grants and also includes Transportation Development Act Local Transportation Fund ("LTF") and Transportation Development Act ("TDA") Projects for Department of Public Works. However, Project Grants will not be limited to the above list if more reports become required by the State of California.

1. For the DOI grants, the selected Contractor shall perform an examination of the Statements of Source and Status of Cash and the related Statements of Budget and Cumulative Expenditures of selected grants. The selected Contractor shall issue the required reports.

2. For the LTF, the selected Contractor shall perform an examination of the financial statements of the respective fund in accordance with the guidelines of the TDA – Statutes and California Code of Regulations. The selected Contractor shall issue the required reports including the Report on Compliance with Regulations Applicable to the Transportation Development Act Local Transportation Fund.

3. For the TDA Article III Projects of the Department of Public Works and SFMTA, the selected Contractor shall perform an examination of the financial statements of the respective projects in accordance with the guidelines of the TDA – Statutes and California Code of Regulations. The selected Contractor shall issue the required reports including the Report on Compliance with Regulations Applicable to the Transportation Development Act Article III Projects.

8.9 Group 11: City and County of San Francisco Retiree Health Care Trust

Group 11 involves performing an audit to account for the City’s Post Employment Health Benefits for covered employees. This fund is currently referred as the Retiree Health Benefit Trust Fund.

9. TIMING OF THE WORK

9.1 The Contractor shall factor in review streamlining (concurrent review) processes for the reports of the Groups under this Agreement to minimize delays and meet the key dates specified in Appendix C which will be agreed upon each year based on the timing of the City’s year-end close process and will be documented in the Contractor’s audit plan presented annually to the City’s Government Audit and Oversight Committee.

9.2 The Contractor shall ensure sufficient communications with the City to appropriately plan and schedule completion of processes and milestones to ensure key dates in Appendix C are met, including document version control and word processing.

9.3 Specific key dates shall be included in engagement letters executed by Contractor and the City. Any changes to the key dates shall require advance written approval by the City.

10. AS-NEEDED AUDITING AND ACCOUNTING SERVICES

The Contractor may be requested to perform as-needed auditing and accounting services. The City will identify such projects and work with the Contractor to define the scope of tasks to be performed. The Contractor may be asked to prepare an engagement letter stating its approach to the project; the methodology that will be employed; the lead personnel and staff that will be assigned; the time it will take to perform the work by staff level; the delivery date of the project deliverables; and the estimated cost to perform the project by staff level.

Any As-Needed services are subject to the City’s review and approval of scope and budget, including staffing, timeline, deliverables, and costs. Costs may be negotiated for a fixed, not-to-exceed price based on the hourly rates detailed in Appendix B. Such hourly rates shall apply to all services provided through this Agreement and subsequent amendments for as-needed accounting and auditing services, unless special expertise is required for which a separate fee will be negotiated. Prior written approval must be obtained by the City’s Project Manager before Contractor incurs as-needed hours.

If the Controller's Office Project Manager provides advance written email approval that as-needed services are billed at an hourly rate, then a Timesheet Summary with the Consultant Name, Role, Dates, Hourly Rate, and # of hours worked must be submitted with the invoice.

11. DELIVERABLE ACCEPTANCE PROCESS

The Contractor's Deliverables shall be professionally organized and must conform in all material respects with the specifications set forth in the Appendices. The Contractor's Deliverables shall be submitted to the Controller's Office Project Manager and City for approval. The Controller's Office Project Manager and City shall approve each Deliverable. The Deliverables review process may, at the City's discretion, require meetings of the City's and Contractor's Project Teams prior to the City's final approval of work products and Deliverables. Please see Appendix G: Sample Deliverable Acceptance Form Template.

12. CHANGE ORDERS

Any changes or modifications to the Agreement must follow the Change Order process defined in Section 3.3.9 (b) ("City Revisions to Program Budgets") of the Agreement and may lead to an Agreement modification which must be approved and executed in the same manner as this Agreement pursuant to Section 11.5 ("Modification of this Agreement") of the Agreement.

All approved Change Orders or Agreement modifications will become attachments to the original Agreement, which will then form the new baseline upon which future changes will be measured.

The scope of the Services as documented herein shall remain unchanged, except as otherwise agreed by the Parties in writing.

The Contractor will notify City promptly after becoming aware of a Change Order Event.

13. MANDATORY CONTRACTOR TRAININGS

At no additional cost to the City, if required based on the scope of work covered under this contract, the Contractor and its Subcontractor(s) must complete all required City and County of San Francisco Cybersecurity Training estimated to be no more than two (2) hours, and COVID-19 Basic Health and Safety Training estimated to be no more than two (2) hours if City's system access and/or City on-site access is required respectively.

14. 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.

Appendix B Calculation of Charges

In accordance with Article 3 of this Agreement, the Contractor's total compensation under this Agreement is detailed below, inclusive of all costs and meetings required to complete all work specified in Appendix A. In no event shall the total costs under this Agreement exceed the amount provided in Article 3 of this Agreement.

Project – Citywide Audits Services – Groups 1, 2, 3, 4, 6, 7, 10, and 11

In order to be paid, Contractor must **activate their Supplier login account** with the [San Francisco City Partner Portal](#) via a request to sfcitypartnersupport@sfgov.org.

Invoices for City's Project Manager's initial approval shall be sent to Kevin.Lacsina@sfgov.org, Carmen.LeFranc@sfgov.org and CentralFinance@sfgov.org.

If supplier is an eSettlements supplier, then separate instructions will be provided.

For invoice submission requirements, please contact CentralFinance@sfgov.org.

Insurance Documentation should be emailed to CentralContracts@sfgov.org.

The Not-To-Exceed Deliverable Amounts are listed in Table 1 which includes up to \$180,000 per Fiscal Year for all 9 Groups. The \$180,000 of As-Needed Funds per Fiscal Year will be managed by the City's Project Manager. Any unused funds from a Fiscal Year may be rolled over into subsequent Fiscal Years and will be managed by the City's Project Manager.

Payments for Deliverables or Tasks

Payments for deliverables/tasks will be paid on a “not-to-exceed” fixed price basis. “Not-to-exceed” means that Contractor shall perform its obligations under the Agreement for the amounts listed in the Cost and Work Estimate below even if it is required to expend more than the number of hours listed in the Cost and Work Estimate.

Payments will be made by the City to Contractor within 30 days after the City has received Contractor's payment request on a monthly basis, provided that:

1. The City has accepted as satisfactory that the services rendered by Contractor conform in all material respects with the requirements of the Contract and Appendix A;
2. A written status report has been provided to the City by Contractor as part of the Contractor's payment request documenting completion of each task in accordance with Appendix A and associated deliverable/task or activity in accordance with the amounts below for which payment is requested. Prior to payment, each status report shall be signed by the Controller's Project Manager indicating his/her review and approval of the Contractor's description of completion in the status report. Please see Appendix G: Sample Deliverable Acceptance Form Template.
3. Insurance documentation is current in accordance with Article 5 of the Agreement; and

4. Contract Monitoring Division subcontractor payment paperwork has been submitted in accordance with Article 3.3.5 of the Agreement.

Invoice Requirements

Contractor must follow the invoicing and supporting documentation instructions as prescribed by the Controller's Office:

1. See Appendix E: Invoice Sample Template for invoice information needed. Each invoice must include the Contract ID#, PO ID#, Invoice Period, and Date of Invoice.
2. Each invoice must identify if a Local Business Enterprise (LBE) worked on the services. Payment terms and conditions must be followed in accordance with Section 3.3.5 LBE Payment and Utilization Tracking System. Contract Monitoring Division subcontractor payment paperwork must be submitted in accordance with Article 11.5 of the Agreement. If contract includes Retainage, then each invoice submission must include Total Invoice Amount, Retainage, and Net Invoice Amount.
3. If as-needed services are billed at an hourly rate, then a Timesheet Summary with the Consultant Name, Role, Dates, Hourly Rate, and # of hours worked must be submitted with the invoice.
4. Additional and separate cost reimbursement will not be provided by the City (e.g., mileage, parking, airfare, taxi, or rental car expenses, etc).

Not-To-Exceed Fees Per Fiscal Year for each Group

Group 1							
	For Audit of FYE 2023	For Audit of FYE 2024	For Audit of FYE 2025	For Audit of FYE 2026	For Audit of FYE 2027	For Audit of FYE 2028	For Audit of FYE 2029
Estimated Fees	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
Annual Comprehensive Financial Report (including General City and other funds)	\$462,860	\$462,860	\$462,860	\$462,860	\$476,746	\$491,048	\$505,779
Single Audit Report (up to 14 major federal programs)	\$303,120	\$303,120	\$303,120	\$303,120	\$312,214	\$321,580	\$331,227
San Francisco General Hospital	\$115,300	\$115,300	\$115,300	\$115,300	\$118,759	\$122,322	\$125,992
Laguna Honda Hospital	\$61,190	\$61,190	\$61,190	\$61,190	\$63,026	\$64,917	\$66,865
Subtotal	\$942,470	\$942,470	\$942,470	\$942,470	\$970,745	\$999,867	\$1,029,863

Group 2							
	For Audit of FYE 2023	For Audit of FYE 2024	For Audit of FYE 2025	For Audit of FYE 2026	For Audit of FYE 2027	For Audit of FYE 2028	For Audit of FYE 2029
Estimated Fees	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
Employee Retirement System	\$131,000	\$131,000	\$131,000	\$131,000	\$134,930	\$138,978	\$143,147

Group 3							
	For Audit of FYE 2023	For Audit of FYE 2024	For Audit of FYE 2025	For Audit of FYE 2026	For Audit of FYE 2027	For Audit of FYE 2028	For Audit of FYE 2029
Estimated Fees	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
Office of Community Investment and Infrastructure	\$114,280	\$114,280	\$114,280	\$114,280	\$117,708	\$121,239	\$124,876

Group 4							
	For Audit of FYE 2023	For Audit of FYE 2024	For Audit of FYE 2025	For Audit of FYE 2026	For Audit of FYE 2027	For Audit of FYE 2028	For Audit of FYE 2029
Estimated Fees	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
San Francisco Health Service System Other Employment Benefit Trust Fund	\$94,440	\$94,440	\$94,440	\$94,440	\$97,273	\$100,191	\$103,197

Group 6							
	For Audit of FYE 2023	For Audit of FYE 2024	For Audit of FYE 2025	For Audit of FYE 2026	For Audit of FYE 2027	For Audit of FYE 2028	For Audit of FYE 2029
Estimated Fees	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
Port of San Francisco	\$119,680	\$119,680	\$119,680	\$119,680	\$123,270	\$126,968	\$130,777

Group 7							
	For Audit of FYE 2023	For Audit of FYE 2024	For Audit of FYE 2025	For Audit of FYE 2026	For Audit of FYE 2027	For Audit of FYE 2028	For Audit of FYE 2029
Estimated Fees	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
San Francisco Finance Corporation	\$23,232	\$23,232	\$23,232	\$23,232	\$23,929	\$24,647	\$25,386

Group 10							
	For Audit of FYE 2023	For Audit of FYE 2024	For Audit of FYE 2025	For Audit of FYE 2026	For Audit of FYE 2027	For Audit of FYE 2028	For Audit of FYE 2029
Estimated Fees	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
State of California Department of Insurance Grants	\$28,192	\$28,192	\$28,192	\$28,192	\$29,038	\$29,909	\$30,806
Transportation Development Act Local Transportation Fund	\$7,476	\$7,476	\$7,476	\$7,476	\$7,700	\$7,931	\$8,169
Transportation Development Act Projects	\$14,896	\$14,896	\$14,896	\$14,896	\$15,343	\$15,803	\$16,277
Subtotal	\$50,564	\$50,564	\$50,564	\$50,564	\$52,081	\$53,643	\$55,252

Hourly Rates by Staff Classification

AS-NEEDED HOURLY RATES							
	For Audit of FYE 2023	For Audit of FYE 2024	For Audit of FYE 2025	For Audit of FYE 2026	For Audit of FYE 2027	For Audit of FYE 2028	For Audit of FYE 2029
	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
Partners	\$380	\$380	\$380	\$380	\$391	\$403	\$415
Directors	\$328	\$328	\$328	\$328	\$338	\$348	\$358
Senior Managers/IT Senior Consultants	\$280	\$280	\$280	\$280	\$288	\$297	\$306
Healthcare Consultant/Actuarial Consultant	\$280	\$280	\$280	\$280	\$288	\$297	\$306
Managers/IT Consultants	\$240	\$240	\$240	\$240	\$247	\$255	\$262
Engagement Supervisors/Supervising Seniors	\$208	\$208	\$208	\$208	\$214	\$221	\$227
Senior Associates	\$180	\$180	\$180	\$180	\$185	\$191	\$197
Experienced Associates	\$140	\$140	\$140	\$140	\$144	\$149	\$153
Staff Associates	\$132	\$132	\$132	\$132	\$136	\$140	\$144
Administrative Assistant	\$104	\$104	\$104	\$104	\$107	\$110	\$114

Not-To-Exceed Fees Per Fiscal Year for 7-Year Contract

Estimated Fees	For Audit of FYE 2023 FY 2024	For Audit of FYE 2024 FY 2025	For Audit of FYE 2025 FY 2026	For Audit of FYE 2026 FY 2027	4-Yr Total	For Audit of FYE 2027 FY 2028	For Audit of FYE 2028 FY 2029	For Audit of FYE 2029 FY 2030	3-Yr Option To Extend Total	7-Yr Total
Group 1 ACFR General City, Zuckerberg, Single Audit, TIDA	\$942,470	\$942,470	\$942,470	\$942,470	\$3,769,880	\$970,745	\$999,867	\$1,029,863	\$3,000,475	\$6,770,355
Group 2 SFERS	\$131,000	\$131,000	\$131,000	\$131,000	\$524,000	\$134,930	\$138,978	\$143,147	\$417,055	\$941,055
Group 3 Redevelopment	\$114,280	\$114,280	\$114,280	\$114,280	\$457,120	\$117,708	\$121,239	\$124,876	\$363,823	\$820,943
Group 4 HSS	\$94,440	\$94,440	\$94,440	\$94,440	\$377,760	\$97,273	\$100,191	\$103,197	\$300,661	\$678,421
Group 6 Port	\$119,680	\$119,680	\$119,680	\$119,680	\$478,720	\$123,270	\$126,968	\$130,777	\$381,015	\$859,735
Group 7 Finance Corp.	\$23,232	\$23,232	\$23,232	\$23,232	\$92,928	\$23,929	\$24,647	\$25,386	\$73,962	\$166,890
Group 10 State of CA Project Grants	\$50,564	\$50,564	\$50,564	\$50,564	\$202,256	\$52,081	\$53,643	\$55,252	\$160,976	\$363,232
Group 11 Retiree Health Benefit Trust Fund	\$45,940	\$45,940	\$45,940	\$45,940	\$183,760	\$47,318	\$48,738	\$50,200	\$146,256	\$330,016
Subtotal	\$1,521,606	\$1,521,606	\$1,521,606	\$1,521,606	\$6,086,424	\$1,567,254	\$1,614,271	\$1,662,698	\$4,844,223	\$10,930,647
As-Needed	\$180,000	\$180,000	\$180,000	\$180,000	\$720,000	\$180,000	\$180,000	\$180,000	\$540,000	\$1,260,000
Total	\$1,701,606	\$1,701,606	\$1,701,606	\$1,701,606	\$6,806,424	\$1,747,254	\$1,794,271	\$1,842,698	\$5,384,223	\$12,190,647

Appendix C Audit Timing

The following are key dates in connection with the annual audits to be performed for each fiscal year covered by this Agreement, as applicable. Any changes to the key dates shall require advance written approval by the City.

For the first year of the contract, the Audit Plan to be presented to the Board Government Audit and Oversight Committee by or before is July 31.

*In subsequent years of the contract, the Audit Plan to be presented to the Board Government Audit and Oversight Committee, the calendar may be modified to be earlier such as April 1.

For the first year of the contract, the Interim/Final field work to start July 1.

**In subsequent years, for the Interim work, the calendar may be modified to be earlier such as May 1, and Final field work could start as early as July 1.

Audit Plan to be presented to the Board Government Audit and Oversight Committee by or before	*July 31
Interim work to be complete	**July 31
Final field work to begin on or after	**July 31
Financial Statements for the various reporting entities to be issued	October 27
Annual Comprehensive Financial Report	November 27
Final Management Letter to be issued	January 31
Single Audit	January 31

Appendix D

Auditor Engagement Letter

This Appendix D to the Agreement between Macias Gini & O’Connell LLP (“MGO”, “we”, “us”, or “our”) and the City and County of San Francisco (“City”, “you”, “your”) sets forth additional terms and conditions regarding professional services that MGO will provide.

The Objective and Scope of the Audit of the Financial Statements

You have requested that MGO audit the City’s governmental activities, business-type activities, each major fund, and aggregate discretely presented component units and remaining fund information as of and for the fiscal years ending June 30, 2023, through 2029, which collectively comprise the basic financial statements.

You acknowledge that we are the group auditor of the City’s basic financial statements as of and for the fiscal years ending June 30, 2023 through 2029. We will not audit the financial statement of the San Francisco International Airport, the San Francisco Municipal Transportation Agency, and the San Francisco County Transportation Authority. Those financial statements will be audited by component auditors.

You have also requested that MGO perform the following audit and attestation engagements:

1. Audit and separately report on the individual financial statements of the:
 - a. San Francisco Employees’ Retirement System;
 - b. Office of Community Investment and Infrastructure (Successor Agency to the San Francisco Redevelopment Agency);
 - c. San Francisco Health Service System Other Employment Benefit Trust Fund;
 - d. Port of San Francisco;
 - e. San Francisco Finance Corporation; and
 - f. Retiree Health Benefit Trust.
2. Audit and separately report on compliance with federal award programs in accordance the audit requirements imposed by the Single Audit Act and Subpart F of Title 2 U.S. Code of Federal Regulations (“CFR”) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (the “Uniform Guidance”).
3. Agreed-upon procedures to review compliance with appropriations limit requirements of Section 1.5 Article XIII B of the California Constitution (commonly referred to as the Gann Limit) in accordance with the procedures agreed to management and recommended by the California Committee on Municipal Accounting (as presented in the CCMA White Paper titled *Agreed-upon Procedures Applied to the Appropriations Limitation Prescribed by Article XIII B of the California Constitution*).
4. Audit and separately report on the Statements of Source and Status of Cash and the related Statements of Budget and Cumulative Expenditures of the Automobile Insurance Fraud

program and the Workers' Compensation Insurance Fraud Program that are funded by the State of California Department of Insurance grants.

5. Audit and separately report on the financial statements of the Local Transportation Fund and on compliance in accordance with applicable statutes, rules, and regulations of the Transportation Development Act (TDA), including section 6661 of Title 21 of the California Administrative Code.
6. Audit and separately report on the financial statements of TDA grant funds from the Metropolitan Transportation Commission and on compliance with applicable statutes, rules, and regulations of the Transportation Development Act (TDA), including section 6664 of Title 21 of the California Code of Regulations, and the allocation instructions and resolutions of the Metropolitan Transportation Commission.

The objectives of our audit are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with auditing standards generally accepted in the United States of America ("GAAS") and *Government Auditing Standards* issued by the Comptroller General of the United States ("GAS") will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of controls.

Data Collection Form

Prior to the completion of our engagement, we will complete the sections of the Data Collection Form that are our responsibility. The form will summarize our audit findings, amounts and conclusions. It is management's responsibility to submit a reporting package including financial statements, schedule of expenditure of federal awards, summary schedule of prior audit findings and corrective action plan along with the Data Collection Form to the federal audit clearinghouse. The financial reporting package must be text searchable, unencrypted, and unlocked. Otherwise, the reporting package will not be accepted by the federal audit clearinghouse. We will assist you in the electronic submission and certification. You may request from us copies of our report for you to include with the reporting package submitted to pass-through entities.

The Data Collection Form is required to be submitted within the earlier of 30 days after receipt of our auditors' reports or nine months after the end of the audit period, unless specifically waived by a federal cognizant or oversight agency for audits. Data Collection Forms submitted untimely are one of the factors in assessing programs at a higher risk.

The Responsibilities of the Auditor

We will conduct our audit in accordance with GAAS, GAS, the Uniform Guidance. Those standards require that we comply with applicable ethical requirements. As part of an audit in

accordance with GAAS, GAS, and the Uniform Guidance, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, based on an understanding of the entity and its environment, the applicable financial reporting framework, and the reporting entity's system of internal control, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinions.
- Consider the reporting entity's system of internal control in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the reporting entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the City's ability to continue as a going concern for a reasonable period of time.

Because of the inherent limitations of an audit, together with the inherent limitations of controls, an unavoidable risk that some material misstatements may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS and GAS. Because the determination of waste or abuse is subjective, GAS does not require auditors to perform specific procedures to detect waste or abuse in financial statement audits.

As part of our engagement, we will apply certain limited procedures to the City's required supplementary information ("RSI") in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- Management's Discussion and Analysis
- Pension Plans – Schedules of the Proportionate Share of the Net Pension Liability
- Pension Plans – Schedules of Changes in Net Pension Liability and Related Ratios
- Pension Plans – Schedules of the Employer Contributions
- Other Postemployment Healthcare Benefits – Schedules of Changes in Net Other Post-employment Benefits Liability and Related Ratios

- Other Postemployment Healthcare Benefits – Schedules of Employer Contributions

We have also been engaged to report on supplementary information other than RSI that accompanies the City’s financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statements as a whole:

- Combining and individual fund financial statement schedules
- Schedule of expenditures of federal awards

The City intends to prepare and submit an annual comprehensive financial reports (ACFR) for evaluation by the Government Finance Officers Association’s Certificate of Achievement for Excellence in Financial Reporting. The ACFR will include introductory and statistical sections prepared by management that will not be subjected to the auditing procedures applied in our audit of the financial statements, and our auditor’s report will not provide an opinion or any assurance on that other information. In connection with our audit of the financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

We will communicate to the Board of Supervisors, through the Government Audit and Oversight Committee, (a) any fraud involving senior management and fraud (whether caused by senior management or other employees) that causes a material misstatement of the financial statements that becomes known to us during the audit, and (b) any instances of noncompliance with laws and regulations that we become aware of during the audit (unless they are clearly inconsequential).

We are responsible for the compliance audit of major programs under the Uniform Guidance, including the determination of major programs, the consideration of internal control over compliance, and reporting responsibilities.

Our report(s) on internal control over financial reporting and over compliance for major programs will include any significant deficiencies and material weaknesses in internal control over financial reporting and over compliance for major programs of which we become aware as a result of obtaining an understanding of internal control and performing tests of internal control over financial reporting and over compliance for major programs consistent with requirements of the standards and regulations identified above. Our report(s) on compliance matters will address material errors, fraud, violations of compliance obligations, and other responsibilities imposed by state and federal statutes and regulations or assumed by contracts; and any state or federal grant, entitlement or loan program questioned costs of which we become aware, consistent with requirements of the standards and regulations identified above.

We will maintain our independence in accordance with the standards of the American Institute of Certified Public Accountants (“AICPA”) and GAS.

The Responsibilities of Management and Identification of the Applicable Financial Reporting Framework

Management is responsible for:

1. Identifying and ensuring that the City complies with the laws and regulations applicable to its activities, and for informing us about all known violations of such laws or regulations, other than those that are clearly inconsequential;
2. The design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the City involving management, employees who have significant roles in internal control, and others where the fraud could have a material effect on the financial statements; and
3. Informing us of its knowledge of any allegations of fraud or suspected fraud affecting the City received in communications from employees, former employees, analysts, regulators, vendors, customers or others.

Management is responsible for the preparation of the RSI which accounting principles generally accepted in the United States of America (“U.S. GAAP”) require to be presented to supplement the basic financial statements.

Management is also responsible for the preparation of the supplementary information presented in relation to the financial statements as a whole in accordance with U.S. GAAP.

Management agrees to include the auditor’s report on the supplementary information in any document that contains the supplementary information and indicates that the auditor has reported on such supplementary information. Management also agrees to present the supplementary information with the audited financial statements or, if the supplementary information will not be presented with audited financial statements, to make the audited financial statements readily available to the intended users of the supplementary information no later than the date of issuance of the supplementary information and the auditor’s report thereon.

The Board of Supervisors, through the Government Audit and Oversight Committee, is responsible for informing us of its views about the risks of fraud, waste or abuse within the City, and its knowledge of any fraud, waste or abuse or suspected fraud, waste or abuse affecting the City.

Our audit will be conducted on the basis that management and, when appropriate, those charged with governance acknowledge and understand that they have responsibility:

1. For the preparation and fair presentation of the financial statements in accordance with U.S. GAAP;
2. To evaluate subsequent events through the date the financial statements are issued. Management also agrees that it will not conclude on subsequent events earlier than the date of the management representation letter referred to below;

3. For the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error;
4. For report distribution; and
5. To provide us with:
 - a. Access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements including information relevant to disclosures;
 - b. Draft financial statements, including information relevant to their preparation and fair presentation, when needed, to allow for the completion of the audit in accordance with the proposed timeline;
 - c. Additional information that we may request from management for the purpose of the audit; and
 - d. Unrestricted access to persons within the City from whom we determine it necessary to obtain audit evidence.

The City's ACFR will be provided to MGO prior to the issuance of the documents and prior to the issuance of the corresponding auditor's reports.

As part of our audit process, we will request from management and, when appropriate, those charged with governance written confirmation concerning representations made to us in connection with the audit, including among other items:

1. That management has fulfilled its responsibilities as set out in the terms of this Engagement Letter; and
2. That it believes the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Because the audit will be performed in accordance with the Single Audit Act and the Uniform Guidance, management is responsible for (a) identifying all federal awards received and expended; (b) preparing and the fair presentation of the schedule of expenditures of federal awards (including notes and noncash assistance received) in accordance with Uniform Guidance requirements; (c) internal control over compliance; (d) compliance with federal statutes, regulations, and the terms and conditions of federal awards; (e) making us aware of significant vendor relationships where the vendor is responsible for program compliance; (f) following up and taking corrective action on audit findings, including the preparation of a summary schedule of prior audit findings and a corrective action plan; (g) timely and accurate completion of the data collection form and (h) submitting the reporting package and data collection form.

Reporting

We will issue a written report upon completion of our audit of the City's financial statements. Our report will be addressed to the Mayor and the Board of Supervisors of the City. Circumstances may arise in which our report may differ from its expected form and content based on the results

of our audit. Depending on the nature of these circumstances, it may be necessary for us to modify our opinion, or add an emphasis-of-matter paragraph or other-matter paragraph to our auditor's report.

If circumstances arise relating to the condition of the City's records, the availability of appropriate audit evidence or indications of a significant risk of material misstatement of the financial statements because of error, fraudulent financial reporting or misappropriation of assets which, in our professional judgment, prevent us from completing the audit or forming an opinion, we retain the unilateral right to take any course of action permitted by professional standards, including, but not limited to, declining to express an opinion or issue a report, or withdrawing from the engagement.

Agreed-Upon Procedures Related to the City's Appropriations Limit Calculation

You have requested MGO to perform specific agreed-upon procedures with respect to the City's appropriations limit calculation for the fiscal years ending June 30, 2023 through 2029. The City is responsible for the appropriations limit calculation in accordance with the requirements of Section 1.5 of Article XIII B of the California. The specific procedures to be performed are listed below.

1. Obtain the completed worksheets supporting the computation that establishes the City's appropriations limit and compare the limit and annual adjustment factors (including the population and inflation options) in those worksheets to the limit and annual adjustment factors that are adopted by resolution of the City's Board of Supervisors.
2. Add last year's limit to total adjustments and compare the resulting amount to this year's limit in the appropriations limit calculation.
3. Compare the current year information presented in the appropriations limit calculation to supporting documents.
4. Compare the prior year appropriations limit presented in the Appropriations Limit Worksheet to the prior year appropriations limit adopted by the Board of Supervisors.

Engagement Services

Our engagement will be conducted in accordance with attestation standards established by the AICPA. Because the procedures listed above do not constitute an examination or review, the objective of which is the expression of an opinion or conclusion, respectively, we will not express an opinion or any other form of assurance thereon and if additional procedures were to be performed, other matters might have come to our attention.

At the conclusion of our engagement, we will submit a report in letter form outlining the procedures performed and our findings resulting from the procedures performed.

Our report will contain a statement that it is intended solely for the use of the Board of Supervisors, the Mayor, and management and should not be used by those who have not agreed to the procedures and taken responsibility for the appropriateness of the procedures for their purposes.

If circumstances arise relating to the condition of the City's records, the availability of appropriate evidence that, in our professional judgment, prevent us from completing the engagement, we retain the unilateral right to take any course of action permitted by professional standards, including declining to express our findings or issue a report, or withdrawing from the engagement.

The procedures that we will perform are not designed and cannot be relied upon to disclose errors, fraud, or illegal acts, should any exist. However, we will inform the appropriate level of management and the Board of Supervisors of any material errors that come to our attention and any fraud or illegal acts that come to our attention, unless they are clearly inconsequential.

We will maintain our independence in accordance with the standards of the AICPA.

Management's Responsibilities

The appropriateness of the procedures included in the attachment is solely the responsibility of the City. We make no representation regarding the appropriateness of the procedures described above, either for the purpose for which these services have been requested or for any other purpose.

Management is responsible for:

1. Providing to us, prior to the conclusion of the engagement, written acknowledgment that the attached procedures are appropriate for the intended purpose of this engagement;
2. Providing to us, at the conclusion of the engagement, a representation letter in accordance with attestation standards established by the AICPA;
3. The design, implementation and maintenance of internal control relevant to the preparation and fair presentation of the appropriations limit calculation that is free from material misstatement, whether due to fraud or error;
4. The design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the City involving management, employees who have significant roles in internal control, and others where the fraud could have a material effect on the appropriations limit calculation; and
5. Informing us of its knowledge of any allegations of fraud or suspected fraud affecting the City received in communications from employees, former employees, analysts, regulators, or others.

Records and Assistance

During the course of our engagement, we may accumulate records containing data that should be reflected in the City's books and records. The City will determine that all such data, if necessary, will be so reflected. Accordingly, the City will not expect us to maintain copies of such records in our possession.

The assistance to be supplied by City personnel will be described in the client participation schedule, which outlines the specific schedules and analyses that should be completed by City personnel, including the dates when the information should be available to us. The participation schedule will be discussed with and agreed to by the designated management personnel. The timely

and accurate completion of this work is an essential condition to our completion of the audit and issuance of our audit report.

Fees and Costs

To accommodate requests to reschedule fieldwork without reasonable notice, additional billings for our services could be required, and our assigned staffing and ability to meet agreed upon deadlines could be impacted.

If such a change in circumstances arises or if some other significant change occurs that causes our fees to exceed our fees outlined in Appendix B, we will obtain prior written email approval from the Controller's Project Manager before starting work.

The City and MGO agree that the City may periodically request MGO to provide additional as-needed services for accounting and reporting. The fees for such additional as-needed services will be based on MGO's hourly billing rates in Appendix B, or as mutually agreed upon between the City and MGO such as deliverable-based as-needed services for a fixed fee.

Use of Subcontractors and Third-Party Products

From time to time and depending upon the circumstances, we may, in our sole discretion, use affiliates of ours or qualified third-party service providers, located within the United States, to assist us in providing professional services to you. In such circumstances, it may be necessary for us to disclose Confidential Information (as such term is defined below) to them. In addition, if necessary to perform the services requested, we may arrange for one or more of the subcontractors or MGO affiliates to provide services to you within the United States. Those third-party service providers and/or affiliates of MGO, we use to assist us in providing services to you are collectively referred to herein as "Subcontractors." You hereby consent to us sharing your information, including Confidential Information, with our Subcontractors, within the United States; provided that such recipients are bound by written obligations of confidentiality that are as protective of your Confidential Information as the confidentiality terms set forth herein. You acknowledge and agree that: (i) our use of Subcontractors may involve the processing, input, disclosure, movement, transfer, and storage of your information and data outside of our technology infrastructure; and (ii) a MGO affiliate may also share with us any work product, time and billing information, or any other information concerning you or your affiliates reasonably necessary for us to perform the services requested under this Engagement Letter.

We also may provide services to you using certain third-party hardware, software, software services, managed services (including, but not limited to, web hosting, data security, data back-up, email security, or similar services subject to direct end-user or subscription agreements), applications, and equipment (collectively, "Third-Party Products"). You acknowledge that your or our use of a Third-Party Product may involve the processing, input, disclosure, movement, transfer, and storage of information provided by you to us, including Personal Information and Confidential Information, within the Third-Party Product's infrastructure and not ours, and that the terms of use and service set forth in the end-user license, subscription, or other agreement with the licensor of such Third-Party Product, including, but not limited to, applicable laws, will govern all obligations of such licensor relating to data privacy, storage, recovery, security, and processing

within such Third-Party Product's infrastructure, as well as, the service levels associated with such Third-Party Product.

Use and Ownership; Access to Documentation

The Documentation for this engagement is the property of MGO. For the purposes of this Engagement Letter, the term "Documentation" shall mean the confidential and proprietary records of MGO's procedures performed, relevant evidence obtained, other engagement-related workpapers, and conclusions reached. Documentation shall not include custom-developed documents, data, reports, analyses, recommendations, and deliverables authored or prepared by MGO for the City under this Engagement Letter, or any documents belonging to the City or furnished to MGO by the City.

Review of Documentation by a successor auditor or as part of due diligence is subject to applicable MGO policies, and will be agreed to, accounted for and billed separately. Any such access to our Documentation is subject to a successor auditor signing an Access & Release Letter substantially in MGO's form. MGO reserves the right to decline a successor auditor's request to review our workpapers.

You acknowledge and grant your assent that representatives of the cognizant or oversight agency or their designee, other government audit staffs, and the U.S. Government Accountability Office shall have access to the audit documentation upon their request and that we shall maintain the audit documentation for a period of at least seven years after the date of the report, or for a longer period if we are requested to do so by the cognizant or oversight agency. Access to the requested audit documentation will be provided under the supervision of MGO audit personnel and at a location designated by our firm.

Confidentiality

MGO and the City may, from time to time, disclose Confidential Information (as defined below) to one another. Accordingly, MGO and the City agree as the recipient of such Confidential Information (the "Receiving Party") to keep strictly confidential all Confidential Information provided to it by the disclosing party (the "Disclosing Party") and use, modify, store, and copy such Confidential Information only as necessary to perform its obligations and exercise its rights under this Engagement Letter. Except as otherwise set forth herein, the Receiving Party may only disclose the Confidential Information of the Disclosing Party to its personnel, agents, and representatives who are subject to obligations of confidentiality at least as restrictive as those set forth herein and only for the purpose of exercising its rights and fulfilling its obligations hereunder. To avoid any doubt, MGO is permitted to disclose the City's Confidential Information to MGO's personnel, agents, and representatives to provide the services or exercise its rights under this Engagement Letter or for the purpose of maintaining compliance with applicable laws and professional, regulatory, and/or ethical standards.

As used herein, "Confidential Information" means, information in any form, oral, graphic, written, electronic, machine-readable or hard copy consisting of: (i) any nonpublic information provided by the Disclosing Party, including, but not limited to, all of its inventions, designs, data, source and object code, programs, program interfaces, know-how, trade secrets, techniques, ideas,

discoveries, marketing and business plans, pricing, profit margins and/or similar information; (ii) any information that the Disclosing Party identifies as confidential; or (iii) any information that, by its very nature, a person in the same or similar circumstances would understand should be treated as confidential, including, but not limited to, this Engagement Letter.

As used herein, the term “Confidential Information” will not include information that: (i) is publicly available at the time of disclosure by the Disclosing Party; (ii) becomes publicly available by publication or otherwise after disclosure by the Disclosing Party, other than by breach of the confidentiality obligations set forth herein by the Receiving Party; (iii) was lawfully in the Receiving Party’s possession, without restriction as to confidentiality or use, at the time of disclosure by the Disclosing Party; (iv) is provided to the Receiving Party without restriction as to confidentiality or use by a third party without violation of any obligation to the Disclosing Party; or (v) is independently developed by employees or agents of the Receiving Party who did not access or use the Confidential Information.

The Receiving Party will treat the Disclosing Party’s Confidential Information with the same degree of care as the Receiving Party treats its own confidential and proprietary information, but in no event will such standard of care be less than a reasonable standard of care. The Receiving Party will promptly notify the Disclosing Party if it becomes aware that any of the Confidential Information of the Disclosing Party has been used or disclosed in violation of this Engagement Letter.

Notwithstanding the foregoing, in the event that the Receiving Party becomes legally compelled to disclose any of the Confidential Information of the Disclosing Party, or as may be required by applicable regulations or professional standards, the Receiving Party will use commercially reasonable efforts to provide the Disclosing Party with notice prior to disclosure, to the extent permitted by law.

Notwithstanding the foregoing, MGO shall have the right to use the Company’s Confidential Information in connection with performing MGO’s obligations hereunder, and also to use de-identified and aggregated key performance indicators derived from MGO’s work product in efforts to improve the services generally, including for benchmarking and analytical purposes, so long as such information remains in a de-identified aggregated form and such use does not violate any of MGO’s obligations of confidentiality hereunder. MGO shall not share or sell any of the de-identified Company information to third parties, and shall store such information in such a way that neither the Company nor any of the Company’s staff or customers can be identified.

Data Protection Compliance

Our Privacy Policy (“Privacy Policy”) is located on our website at <https://www.mgocpa.com/privacy>. Our Privacy Policy may be amended from time to time in our sole discretion and without prior notice, and is hereby incorporated by reference into this Engagement Letter. You acknowledge that you have read and understand the Privacy Policy and agree to the practices as described therein.

We take reasonable steps to comply with all applicable privacy, cybersecurity, and data protection laws that may apply to Personal Information and Confidential Information we process on behalf

of our clients. Upon written request, but not more than annually during the term of this Engagement Letter, we will deliver to you a copy of our third-party provided ISO27001 report evidencing the operating effectiveness of our Information Technology (“IT”) control environment. We will also provide summaries of our IT security and disaster recovery policies and make our senior IT personnel reasonably available for discussion upon request. Our ISO27001 report and any information we disclose to you concerning our IT control environment shall constitute Confidential Information of MGO and shall be subject to the confidentiality obligations set forth in this Engagement Letter.

Personal Information

As used herein, the term “Personal Information” means any personal information that directly or indirectly identifies a natural person as may be defined by applicable privacy, data protection or cybersecurity laws, and includes, but is not limited to, nonpublic, personally identifiable information such as Social Security numbers, Social Insurance numbers, driver’s license numbers or state- or province-issued identification card numbers, credit or debit card numbers with or without any required security code, number or passwords, health information, and other personal information as defined by applicable laws, whether of the City or the City’s customers or other third parties.

Each party agrees to transmit Personal Information consistent with applicable laws and any other obligations the respective party may have. In the event you transmit to us Personal Information in an unencrypted format or via unencrypted means, you agree that we have no obligation to notify you of the foregoing.

You represent and warrant that you have provided all notices and obtained all consents required under applicable data protection laws prior to your collection, use and disclosure to us or our Subcontractors of such Personal Information and shall take reasonable steps to ensure that such Personal Information does not include irrelevant or unnecessary information about individuals.

Where we are acting as a service provider under the California Consumer Privacy Act, including as amended or replaced (“CCPA”), we (i) will not sell any Personal Information received from the City; (ii) will not disclose Personal Information to another business, person, or third party, except for the purpose of maintaining or providing the services or exercising our rights as specified in this Engagement Letter, including to provide Personal Information to advisers or sub-contractors, or to the extent such disclosure is required by law. We certify that we understand and will comply with the requirements enumerated in (i) and (ii). For the avoidance of doubt, all permitted uses of Personal Information by service providers that are enumerated in the CCPA are understood to apply to the Personal Information processed by us.

We are permitted to use all Personal Information to perform our obligations and exercise our rights under this Engagement Letter. The parties agree that as part of the performance of the services as described in this Engagement Letter, and as part of the direct business relationship between the parties, we may use the Personal Information (de-identified and aggregated) to improve and develop services and for other similar internal and business purposes. We agree to maintain appropriate security measures to protect such Personal Information in accordance with applicable laws.

If we become aware of an unauthorized acquisition or use of City-provided Personal Information, we will promptly inform you of such unauthorized acquisition or use as required by applicable laws and reasonably cooperate with you in support of any breach notification requirements as imposed upon you by applicable laws.

Retention of Records

We will return to you all original records you provide to us in connection with this engagement. Further, in addition to providing you with those deliverables set forth in this Engagement Letter, we will provide to you a copy of any records we prepare or accumulate in connection with such deliverables which are not otherwise reflected in your books and records without which your books and records would be incomplete. You have the sole responsibility for retaining and maintaining in your possession or custody all of your financial and nonfinancial records related to this engagement. We will not host, and will not accept responsibility to host, any of your records. We, however, may maintain a copy of any records of yours necessary for us to comply with applicable law and/or professional standards or to exercise our rights under this Engagement Letter. Any such records retained by us will be subject to the confidentiality obligations set forth herein and destroyed in accordance with our record retention policies. Notwithstanding the above, the Contractor shall adhere to Section 3.4 in the Agreement.

Miscellaneous

. Notwithstanding anything stated to the contrary in this Engagement Letter, the City acknowledges and consents that we also may utilize de-identified and aggregate Confidential Information and Personal Information that you have provided to us in connection with this engagement to develop, enhance, modify, and improve technologies, tools, methodologies, services and offerings and/or for development or performance of data analysis, business analytics or insights, or other insight generation. Information developed in connection with these purposes may be used or disclosed to you or current or prospective clients to provide them services or offerings. We will not use or disclose such Confidential Information or Personal Information in a way that would permit the City or an individual to be identified by third parties without your prior written consent.

You have informed us that you may issue public debt in the future and that you may include our report on your financial statements in the offering statement. You have further informed us that you do not intend for us to be associated with the proposed offering.

We agree that our association with any proposed offering is not necessary, providing the City agrees to clearly indicate that we are not associated with the contents of any such official statement or memorandum. The City agrees that the following disclosure will be prominently displayed in any such official statement or memorandum:

Macias Gini & O'Connell LLP, our independent auditor, has not been engaged to perform, and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. Macias Gini & O'Connell LLP also has not performed any procedures relating to this *[official statement]* *[memorandum]*.

Our professional standards require that we perform certain additional procedures, on current and previous years' engagements, whenever a partner or professional employee leaves the firm and is subsequently employed by or associated with a client in a key position.

Non-CPA Owner Notice Requirement

MGO is owned by professionals who hold certified public accountant (CPA) licenses as well as by professionals who are not licensed CPAs. Therefore, depending on the nature of the services being provided, non-CPA owners may be involved in providing certain services hereunder.

Governing Law

This Engagement Letter, including, without limitation, its validity, interpretation, construction, and enforceability, and any dispute, litigation, suit, action, claim, or other legal proceeding arising out of, from, or relating in any way to this Engagement Letter, any provisions herein, a report issued or the services provided hereunder, will be governed and construed in accordance with the laws of the State of California, without regard to its conflict of law principles, and applicable U.S. federal law.

Appendix E Invoice Sample Template

Invoice Date: _____	Contract No.: _____
Contractor: _____	Purchase Order No.: _____
Address: _____	Invoice Number: _____
_____	Invoicing Period: _____
Contact: _____	Local Business Enterprise (LBE) did <u>not</u> perform services on this invoice.
Tel: _____	LBE did perform services on this invoice and list LBE \$ Amount. _____
Contract Term: _____	
Contract Name: _____	
Deliverable Number: _____	

Deliverable/Description	Percent of Work Completed	Hours Worked This Period	Hourly Rate	Prime Amount	LBE Amount	Total Amount Due (Prime Amount + LBE Amount)
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
Total Expenses				\$ -	\$ -	\$ -

Deliverable Number: _____

Deliverable/Description	Percent of Work Completed	Hours Worked This Period	Hourly Rate	Prime Amount	LBE Amount	Total Amount Due (Prime Amount + LBE Amount)
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
Total Expenses				\$ -	\$ -	\$ -

Type of Payment	Amount Due
Prime Contractor Invoice Payment	
LBE Subcontractor Payment	
Total Payments	

I certify that the information provided above is to the best of my knowledge, complete and accurate. The amount requested for reimbursement is in accordance with the services to be provided under the provision of the contract and Appendix B (Calculation of Charges). Full justification and backup records are maintained in our office at the address indicated and available for inspection upon request.

Signature: _____ Date: _____

Appendix F
Change Order Request Template

CHANGE REQUEST No. CRXXX – (TITLE)

GENERAL INFORMATION

Date Requested: (Date)

Requested by: (City project resource making the request)

Assigned to: (project team member who completed the change request form)

Priority: (priority number – description, e.g. 1 – Urgent and Major Impact, 2 – Urgent and Minor Impact, 3 – Not Urgent and Major Impact, 4 – Not Urgent and Minor Impact)

BACKGROUND

- Description of the current situation and the problem

FULL WORK DESCRIPTION/Change

- Description of detailed solution
- Reason for the change
- Implications of not making the change
- Risks/assumptions
- List business requirements

SCOPE/DELIVERABLES CHANGES

Below is a list of deliverables identified by the City that requires development or revision by the Contractor due to this work authorization.

The parties understand and agree that additional deliverables requiring development or revision may be identified at a later date.

The Contractor shall exercise a good-faith effort to identify and list in this work authorization deliverables that require development or are impacted by this work authorization.

The Contractor shall develop or revise, as applicable, each identified deliverable in accordance with the Agreement. The Contractor shall complete the development or revision within a timeframe to be mutually agreed upon by the parties.

New Deliverables (City defined)

Deliverable Title	Approved Deliverable Acceptance Criteria (DAC)
1.	
2.	

Deliverable Revisions

Deliverable Title	Approved Deliverable Acceptance Criteria (DAC)	Deliverable Update (ready for distribution prior to work authorization)
1.		
2.		
3.		

REFERENCES

- (Contract sections, other work authorizations, request for proposal, etc.)

SCHEDULE CHANGES

Estimated Start Date	Estimated Completion Date *

* *Completion date is defined as the date the Contractor implements change(s) into the production environment. The completion date does not imply acceptance criterion is met or the work authorization is approved for payment.*

WORK AUTHORIZATION PROPOSED WORK PLAN

- Attach revised work plan for proposed schedule changes. Include milestones and estimated completion dates.

* *Estimated completion dates are determined by the City in coordination with the Contractor; however, the actual dates will reside in the mutually agreed upon Work Plan to be provided five (5) business days from the date of work authorization approval to commence work.*

RESOURCES/COSTS CHANGES

Staff Assigned	Staff Position	Materials	Labo r Hour	Hourl y Labo	COST
1.					
2.					
3.					

Summary of Total Impact of Change(s):
Impact on Scope:
Impact on Schedule:
Impact on Resources/Cost:
Alternatives to Proposed Change(s) (if any)

CONTRACTOR TASK AND RESPONSIBILITIES

1. (to be completed by the Contractor)
2. (to be completed by the Contractor)

COMPLETION CRITERIA

1. (to be completed by the City)
2. (to be completed by the City)

CITY RESPONSIBILITIES

1. Participate in and oversee the Contractor tasks and responsibilities.
2. (to be completed by the City)
3. This work authorization will be performed in accordance with the applicable provisions of the Agreement

Required Approvals:

Reviewer Name	Department	Decision	Date
		<input type="checkbox"/> Approved <input type="checkbox"/> Rejected	
		<input type="checkbox"/> Approved <input type="checkbox"/> Rejected	
		<input type="checkbox"/> Approved <input type="checkbox"/> Rejected	
		<input type="checkbox"/> Approved <input type="checkbox"/> Rejected	

APPROVALS

**CITY AND COUNTY OF SAN
FRANCISCO**

CONTRACTOR

PROJECT MANAGER NAME
City Project Manager

PROJECT MANAGER NAME
Contractor Project Manager

Date

Date

Appendix G
Sample Deliverable Acceptance Form Template

I. Deliverable Description from SOW

Group 10: State of California Project Grants for DOI, LTF and TDA

Currently includes State of California Department of Insurance (“DOI”) grants and also includes Transportation Development Act Local Transportation Fund (“LTF”) and Transportation Development Act (“TDA”) Projects for Department of Public Works. However, Project Grants will not be limited to the above list if more reports become required by the State of California.

I. Approach to Deliverable Development

1. For the DOI grants, the selected Contractor shall perform an examination of the Statements of Source and Status of Cash and the related Statements of Budget and Cumulative Expenditures of selected grants. The selected Contractor shall issue the required reports.

2. For the LTF, the selected Contractor shall perform an examination of the financial statements of the respective fund in accordance with the guidelines of the TDA – Statutes and California Code of Regulations. The selected Contractor shall issue the required reports including the Report on Compliance with Regulations Applicable to the Transportation Development Act Local Transportation Fund.

3. For the TDA Article III Projects of the Department of Public Works and SFMTA, the selected Contractor shall perform an examination of the financial statements of the respective projects in accordance with the guidelines of the TDA – Statutes and California Code of Regulations. The selected Contractor shall issue the required reports including the Report on Compliance with Regulations Applicable to the Transportation Development Act Article III Projects.

II. Additional Comments from Contractor (Insert text below if needed)

III. Review

1. Deliverable Acceptance Criteria

The City will evaluate the following criteria for Deliverable acceptance:

Criterion	City Check-off (to be used during review)
Did the City's Project Manager provide written approval of the Approach to Deliverable Development and materials?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Comments:
Does the Deliverable address the contents described in the Deliverable Acceptance Criteria?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Comments:
Is the Deliverable written to the level of detail and quality as Required?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Comments:
Is the Deliverable consistent in style and quality?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Comments:

2. Review Committee

The following project resources to review this Deliverable: Carmen LeFranc, or Jocelyn Quintos.

3. Deliverable Acceptance Form Approvals

This Deliverable Acceptance Form was completed according to contract requirements of Agreement

Submitted by (Contractor signature)

Position title

Date

Approved by (City signature)

Position title

Date

Appendix H Business Associate Agreement

This Business Associate Agreement (“BAA”) supplements and is made a part of the agreement by and between the City and County of San Francisco, the Covered Entity (“CE”), and Macias Gini & O’Connell LLP (“Contractor”), the Business Associate (“BA”), dated July 1, 2023 (“Agreement”). To the extent that the terms of the Agreement are inconsistent with the terms of this BAA, the terms of this BAA shall control.

RECITALS

A. CE, by and through the Controller’s Office (“CON”), wishes to disclose certain information to BA pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).

B. For purposes of the Agreement and this BAA, CE requires Contractor, even if Contractor is also a covered entity under HIPAA, to comply with the terms and conditions of this BAA as a BA of CE.

C. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated there under by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws, including, but not limited to, California Civil Code §§ 56, et seq., California Health and Safety Code § 1280.15, California Civil Code §§ 1798, et seq., California Welfare & Institutions Code §§5328, et seq., and the regulations promulgated there under (the “California Regulations”).

D. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into an agreement containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this BAA.

E. BA enters into agreements with CE that require the CE to disclose certain identifiable health information to BA. The parties desire to enter into this BAA to permit BA to have access to such information and comply with the BA requirements of HIPAA, the HITECH Act, and the corresponding Regulations.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

1. Definitions.

a. Breach means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information, and shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402], as well as California Civil Code Sections 1798.29 and 1798.82.

b. Breach Notification Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Part 164, Subpart D.

c. Business Associate is a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information received from a covered entity, but other than in the capacity of a member of the workforce of such covered entity or arrangement, and shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.

d. Covered Entity means a health plan, a health care clearinghouse, or a health care provider who transmits any information in electronic form in connection with a transaction covered under HIPAA Regulations, and shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

e. Data Aggregation means the combining of Protected Information by the BA with the Protected Information received by the BA in its capacity as a BA of another CE, to permit data analyses that relate to the health care operations of the respective covered entities, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

f. Designated Record Set means a group of records maintained by or for a CE, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

g. Electronic Protected Health Information means Protected Health Information that is maintained in or transmitted by electronic media and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 160.103. For the purposes of this BAA, Electronic PHI includes all computerized data, as defined in California Civil Code Sections 1798.29 and 1798.82.

h. Electronic Health Record means an electronic record of health-related information on an individual that is created, gathered, managed, and

consulted by authorized health care clinicians and staff, and shall have the meaning given to such term under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

i. Health Care Operations shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

j. Privacy Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

k. Protected Health Information or PHI means any information, including electronic PHI, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Sections 160.103 and 164.501. For the purposes of this BAA, PHI includes all medical information and health insurance information as defined in California Civil Code Sections 56.05 and 1798.82.

l. Protected Information shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.

m. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, and shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.

n. Security Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

o. Unsecured PHI means PHI that is not secured by a technology standard that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute, and shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

2. Obligations of Business Associate.

a. User Training. The BA shall provide, and shall ensure that BA subcontractors provide, training on PHI privacy and security, including HIPAA and HITECH and its regulations, to each employee or agent that will access, use or disclose Protected Information, upon hire and/or prior to accessing, using or disclosing Protected Information for the first time, and at least annually thereafter during the term of the Agreement. BA shall maintain, and shall ensure that BA subcontractors maintain, records indicating the name of each employee or agent and date on which the PHI privacy and security trainings were completed. BA shall retain, and ensure that BA subcontractors retain, such records for a period of seven years after the Agreement terminates and shall make all such records available to CE within 15 calendar days of a written request by CE.

b. Permitted Uses. BA may use, access, and/or disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.502, 164.504(e)(2). and 164.504(e)(4)(i)].

c. Permitted Disclosures. BA shall disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2 (n) of this BAA, to the extent it has obtained knowledge of such occurrences [42 U.S.C.

Section 17932; 45 C.F.R. Section 164.504(e)]. BA may disclose PHI to a BA that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit Protected Information on its behalf, if the BA obtains satisfactory assurances, in accordance with 45 C.F.R. Section 164.504(e)(1), that the subcontractor will appropriately safeguard the information [45 C.F.R. Section 164.502(e)(1)(ii)].

d. Prohibited Uses and Disclosures. BA shall not use or disclose Protected Information other than as permitted or required by the Agreement and BAA, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the Protected Information solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(1)(vi)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Agreement.

e. Appropriate Safeguards. BA shall take the appropriate security measures to protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the CE, and shall prevent any use or disclosure of PHI other than as permitted by the Agreement or this BAA, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.306, 164.308, 164.310, 164.312, 164.314 164.316, and 164.504(e)(2)(ii)(B). BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316, and 42 U.S.C. Section 17931. BA is responsible for any civil penalties assessed due to an audit or investigation of BA, in accordance with 42 U.S.C. Section 17934(c).

f. Business Associate's Subcontractors and Agents. BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph 2.f. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2) through (e)(5); 45 C.F.R. Section 164.308(b)]. BA shall mitigate the effects of any such violation.

g. Accounting of Disclosures. Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure [45 C.F.R. 164.528(b)(2)]. If an individual or an individual's representative submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five (5) calendar days.

h. Access to Protected Information. BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within (5) days of request by CE to enable CE to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains Protected Information in electronic format, BA shall provide such information in electronic format as necessary to enable CE to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. 164.524.

i. Amendment of Protected Information. Within ten (10) days of a request by CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA and its agents and subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment or other documentation to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R Section 164.526. If an individual requests an amendment of

Protected Information directly from BA or its agents or subcontractors, BA must notify CE in writing within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

j. Governmental Access to Records. BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the “Secretary”) for purposes of determining BA’s compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.

k. Minimum Necessary. BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the intended purpose of such use, disclosure, or request. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)]. BA understands and agrees that the definition of “minimum necessary” is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes “minimum necessary” to accomplish the intended purpose in accordance with HIPAA and HIPAA Regulations.

l. Data Ownership. BA acknowledges that BA has no ownership rights with respect to the Protected Information.

m. Notification of Breach. BA shall notify CE within 5 calendar days of any breach of Protected Information; any use or disclosure of Protected Information not permitted by the BAA; any Security Incident (except as otherwise provided below) related to Protected Information, and any use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BA to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws.

[42 U.S.C. Section 17921; 42 U.S.C. Section 17932; 45 C.F.R. 164.410; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]

n. Breach Pattern or Practice by Business Associate's Subcontractors and Agents. Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(iii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or this BAA, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the contractual arrangement with its subcontractor or agent, if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or this BAA within five (5) calendar days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

3. Termination.

a. Material Breach. A breach by BA of any provision of this BAA, as determined by CE, shall constitute a material breach of the Agreement and this BAA and shall provide grounds for immediate termination of the Agreement and this BAA, any provision in the AGREEMENT to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii).]

b. Judicial or Administrative Proceedings. CE may terminate the Agreement and this BAA, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

c. Effect of Termination. Upon termination of the Agreement and this BAA for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this BAA to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(2)(ii)(J)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.

d. Civil and Criminal Penalties. BA understands and agrees that it is subject to civil or criminal penalties applicable to BA for unauthorized use, access or disclosure of Protected Information in accordance with the HIPAA Regulations and the HITECH Act including, but not limited to, 42 U.S.C. 17934 (c).

e. Disclaimer. CE makes no warranty or representation that compliance by BA with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations or corresponding California law provisions will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

4. Amendment to Comply with Law.

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the updated standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable state or federal laws. CE may terminate the Agreement upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Agreement or this BAA when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

5. Reimbursement for Fines or Penalties.

In the event that CE pays a fine to a state or federal regulatory agency, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of PHI by BA or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine or penalties or damages within thirty (30) calendar days from City's written notice to BA of such fines, penalties or damages.

Appendix I
Business Associate Agreement for Health Service System

In accordance with the terms of the Service Agreement, the Health Service System will disclose the following CCSF employee and retiree demographic information to the BA in a standard digital format, through a secure data exchange:

- i. Member Name
- ii. Employee ID
- iii. Member Gender
- iv. Member Date of Birth
- v. Status Code
- vi. Medical Plan Selected
- vii. Hire Date
- viii. Service Date
- ix. Retirement Date
- x. Termination Date
- xi. Job Code
- xii. Department
- xiii. Retirement Reason
- xiv. Termination Reason
- xv. Dependent Date of Birth
- xvi. Dependent Gender
- xvii. Applicable SFHSS Enrollment Application Form, as requested
- xviii. UNION_CD
- xix. BARG_UNIT
- xx. EMPLOYER_PREMIUM
- xxi. EMPLOYEE_PREMIUM
- xxii. MEDICARE_A_IND
- xxiii. MEDICARE_B_IND
- xxiv. ZIPCODE
- xxv. DEPENDENT_RELATIONSHIP
- xxvi. PROP B INDICATOR
- xxvii. ANNUAL_RT