

File No. 121193

Committee Item No. 3

Board Item No. 28

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance

Date January 16, 2013

Board of Supervisors Meeting

Date JANUARY 29, 2013

Cmte Board

- | | | |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

(Use back side if additional space is needed)

- | | | |
|-------------------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Board of Supervisors Resolution No. 173-10</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Alisa Miller Date January 11, 2013

Completed by: V Young Date 1-23-13

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

1 [Contract Amendment - Renewable Energy and Climate Change Professional Services -
2 \$31,400,000]

3
4 **Resolution approving the Fourth Amendment to the contract with ICF Resources, LLC**
5 **for Renewable Energy and Climate Change Professional Services, to increase the**
6 **amount of the contract by \$12,400,000 for a total of \$31,400,000 and to extend the term**
7 **of the contract from July 1, 2014, to December 31, 2016.**

8
9 WHEREAS, Charter Section 9.118 requires the Board of Supervisors to approve
10 contracts requiring expenditures by the City of ten million dollars or more; and

11 WHEREAS, Through a Request for Proposal dated June 30, 2009, the Department of
12 the Environment selected ICF Resources, LLC to provide energy efficiency, renewable
13 energy, and climate change professional, technical and consulting services for the
14 Department's energy conservation and efficiency programs; and

15 WHEREAS, The original contract was approved by the Board of Supervisors in the
16 amount of \$19 million for five years and 3 months, from March 19, 2010 to July 1, 2014,
17 through Resolution Number 173-10, and subsequently amended in May, August and
18 September of 2010; and

19 WHEREAS, The Department's energy conservation and efficiency programs have
20 secured funding for an additional two years; and

21 WHEREAS, The Department of the Environment now seeks authorization to extend the
22 current contract with ICF Resources, LLC for two and one-half additional years, to
23 December 31, 2016, and to increase the contract amount by \$12,400,000 for a new total of
24 \$31,400,000; and
25

1 WHEREAS, A copy of the proposed Fourth Amendment to the contract is on file with
2 the Clerk of the Board of Supervisors in File No. 121193, and is hereby declared to be a part
3 of this Resolution as if set forth fully herein ("ICF Agreement "); now, therefore, be it

4 RESOLVED, That the Board of Supervisors, authorizes the Department of the
5 Environment to enter into the Fourth Amendment with ICF Resources, LLC to increase the
6 contract total from \$19,000,000 for the period of March 19, 2010 through July 1, 2014, to
7 \$31,400,000 for the total contract term of March 19, 2010 through December 31, 2016.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



SF Environment

Our home. Our city. Our planet.

A Department of the City and County of San Francisco



EDWIN M. LEE
Mayor

MELANIE NUTTER
Director

November 16, 2012

Ms. Angela Calvillo
Clerk of the Board
Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlet Place, Room 244
San Francisco, CA 94102

Re: Approval of Amendment to Agreement to Provide Administrative and Technical Support for the Department's Energy and Climate Programs

Dear Ms. Calvillo:

Attached for the Board of Supervisors' approval is a resolution approving Amendment No.4 to the contract with ICF Resources, L.L.C. This amendment will increase the contract amount from \$19M to \$31.4M for continuing services to the Department of the Environment's Energy and Climate programs.

The following documents are attached (five sets):

- Board of Supervisor Resolution;
- Ethics Form SFEC-126 for ICF Resources;
- Copy of Amendment No. 4
- Copy of Resolution No. 173-10, authorizing the original contract;
- Copy of the original contract and prior amendments.

Please contact Guillermo Rodriguez, Director of Policy & Communications, at (415) 355-3756 with any questions regarding this matter.

Yours very truly,

Rachel C. Buerkle
Sr. Administrative Analyst
415-355-3704

Enclosures

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2012 DEC 11 AM 11:25

12/11/12
2012 DEC 11

1 [Professional Services Agreement for Energy Efficiency, Renewable Energy and Climate
2 Change with ICF International].

3 **Resolution approving a Professional Services Agreement with ICF International for**
4 **Energy Efficiency, Renewable Energy, and Climate Professional Services at a total cost**
5 **of \$19,000,000.**
6

7 WHEREAS, Charter Section 9.118 requires the Board of Supervisors to approve
8 contracts requiring expenditures by the City of ten million dollars or more; and
9

10 WHEREAS, the Department of the Environment seeks authorization for a five year
11 contract with ICF International with an estimated not-to-exceed total cost to the City of \$19
12 million for services required for City programs that address Energy Efficiency, Renewable
13 Energy, and Climate Change; and

14 WHEREAS, a copy of the proposed contract is on file with the Clerk of the Board of
15 Supervisors in File No. 100389, and is hereby declared to be a part of this Resolution as if set
16 forth fully herein ("ICF Agreement"); and

17 WHEREAS, the ICF Agreement will be funded in part from sources previously
18 approved by the Board of Supervisors, including but not limited to, a \$11,540,000 revenue
19 contract from the California Public Utilities Commission, through the Pacific Gas and Electric
20 Company (Resolution 0033-10); a minimum of \$3,800,000 from a \$7,739,300 block grant
21 from the U.S. Department of Energy through the American Recovery and Reinvestment Act
22 (ARRA) of 2009 (Ord. 0002-10); a \$250,000 grant from the Sidney E. Frank Foundation (Ord.
23 0014-10); a \$175,000 grant from Living Cities (Ord. 0013-10); and an \$875,957 ARRA grant
24 from the California Energy Commission State Energy Program through the Association of Bay
25 Area Governments (Resolution 0060-10); and

1 WHEREAS, the Department of the Environment selected ICF International as the
2 highest ranked proposer responding to a Request for Proposals issued June 30, 2009; and

3 WHEREAS, the \$19 Million estimated value of the ICF Agreement consists of
4 approximately \$6,500,000 in compensation payable to ICF International for its services and
5 \$12,500,000 in cash rebates that "pass-through" the contract and will be paid out by ICF as
6 designated by the City's programs to private property owners for qualifying energy-saving
7 services and upgrades to properties located within the City; now, therefore, be it

8 RESOLVED, That the Board of Supervisors, under Charter Section 9.118, hereby
9 approves the contract with ICF International for Energy Efficiency, Renewable Energy, and
10 Climate Professional Services for a term of five (5) years with total City expenditures,
11 including rebate funding, of \$19 million. The Board of Supervisors further authorizes the
12 Director of the Department of the Environment to execute an agreement in substantially the
13 form of the ICF Agreement on file with the Clerk of the Board of Supervisors.



City and County of San Francisco

Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 100389

Date Passed: April 27, 2010

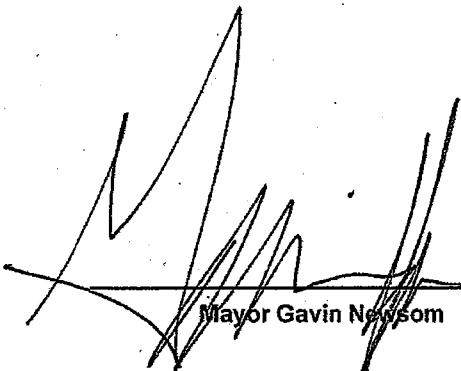
Resolution approving a Professional Services Agreement with ICF International for Energy Efficiency, Renewable Energy, and Climate Professional Services at a total cost of \$19,000,000.

April 27, 2010 Board of Supervisors - ADOPTED


Ayes: 10 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Duffy, Elsbernd, Mar and Mirkarimi
Excused: 1 - Maxwell

File No. 100389

I hereby certify that the foregoing Resolution was ADOPTED on 4/27/2010 by the Board of Supervisors of the City and County of San Francisco.



Mayor Gavin Newsom



Angela Calvillo
Clerk of the Board

5/6/2010
Date Approved

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

Fourth Amendment

THIS AMENDMENT (this "Amendment") is made as of October 15, 2012, in San Francisco, California, by and between ICF Resources, L.L.C., ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

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

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period, and increase the contract amount.

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

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

a. Agreement. The term "Agreement" shall mean the Agreement dated March 19, 2010 between Contractor and City, as amended by the:

First amendment, dated May 19, 2010, and
Second amendment, dated August 4, 2010, and
Third Amendment, dated September 1, 2010.

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

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

a. Section 5. Section 5. Compensation of the Agreement currently reads as follows:

5. Compensation. Compensation shall be made in monthly payments within 30 days after approval by the City of work, as set forth in Section 4 of this Agreement, that the Director of the **Department of the Environment**, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed as of the last day of the preceding month. In no event shall the amount of this Agreement exceed **Nineteen Million Dollars (\$19,000,000), which consists of \$6,500,000 in compensation payable to the Contractor and \$12,500,000 in cash rebates to pay for qualifying energy-saving upgrades to commercial and residential property in San Francisco.** The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the **Department of the Environment** as being in accordance with this Agreement. City may withhold

payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

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

5. **Compensation.** Compensation shall be made in monthly payments within 30 days after approval by the City of work, as set forth in Section 4 of this Agreement, that the Director of the **Department of the Environment**, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed as of the last day of the preceding month. In no event shall the amount of this Agreement exceed **THIRTY ONE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$31,400,000)**, which amount includes funds to be used by Contractor for 'incentive payments', as provided in Appendix B-4. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the **Department of the Environment** as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

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

2. **Term of the Agreement.** Subject to Section 1, the term of this Agreement shall be from March 19, 2010 to July, 1, 2014.

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

2. **Term of the Agreement.** Subject to Section 1, the term of this Agreement shall be from March 19, 2010 to December 31, 2016.

c. **Appendix B-3**, dated September 1, 2010 is hereby deleted in its entirety and replaced with the attached Appendix B-4, dated October 15, 2012.

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

4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

Recommended by:

Melanie Nutter, Director
Department of the Environment

Approved as to Form:

Dennis J. Herrera
City Attorney

By:

Thomas J. Owen
Deputy City Attorney

Approved:

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

CONTRACTOR

ICF Resources, L.L.C.

Robert F. Toth
Senior Vice President, Contracts &
Administration

ICF Resources, L.L.C.
620 Folsom Street, #200
San Francisco, Ca 94107

City vendor number: 57811

CALCULATION OF CHARGES

ICF Resources, L.L.C.

During the term of this contract, City shall pay Contractor on a time and material basis for labor and indirect costs; and, when working on an incentive-payment program, in accordance with the terms described in Section 2 below. Tasks will be assigned using Work Orders, which will describe tasks and indicate a not-to-exceed dollar amount for completion of tasks.

1. Time and Materials Payments

Time: The City shall make payment for Contractor's labor following receipt of an invoice indicating project and tasks, and listing personnel, hourly rate, and number of hours worked. Billing rates reflect labor plus indirect costs.

TABLE B-1: FEE SCHEDULE

Position/Job Class	\$/Hour
Officer-in-Charge	\$280
Senior Architect	\$240
Engineering Manager	\$235
Manager	\$205
Principal Engineer	\$205
Program Manager	\$185
Project/Construction Manager	\$185
Senior Graphic Designer	\$180
Project Manager	\$155
Green Building Consultant	\$155
Architect	\$165
Senior Engineer	\$165
Senior Construction Manager	\$165
Associate Engineer	\$140
Database Specialist	\$150
Data Analyst	\$100
Auditor	\$130
Junior Auditor	\$ 80
Junior Program Staff	\$120
Marketer	\$100
Junior Graphic Designer	\$100
Research/Writer	\$100
Administrative	\$100
Bilingual Translation	\$100
Community Outreach	\$ 80
Clerk	\$ 80

This contract extends until December 31, 2016. Billing rates in Table B-1 shall apply as of the effective date of this Agreement and extend through March 31, 2013. Beginning April 1, 2013, and for each subsequent twelve-month period through the term of the contract, billing rates may be increased by the amount of increase in the US Bureau of Labor Statistics, Consumer Price Index, PCU5416, Management and Technical Consulting Services. The base month is December, 2009. The increase shall be based on the increase of December, 2010 over December 2009 for the first calculation. Each following year's calculation will be based on a December to December comparison. If December figures are not available, calculation will be based on the latest available 12 month comparison period.

The new billing rate shall not exceed a 3% increase over the prior year's billing rate.

Contractor must submit a request for an increase in billing rates at least 60 days prior to each April 1 start date in order to receive increased rates for the full twelve month period. The request must include documentation from the US Bureau of Labor Statistics website.

Materials/Other Direct Costs: Contractor must provide receipts and/or other documentation of proof of expenditures for charges for materials purchased in performance of project tasks and for other direct costs. Direct charges shall be invoiced at cost.

Subcontractor Costs: Contractor's invoice must include all Subcontractor charges including subcontractor(s) invoice(s) for time as defined above, and receipts and/or other documentation of proof of expenditures for materials and other direct costs. Contractor's invoice may include an additional administrative fee of 5% on Subcontractor costs, listed clearly as a separate charge.

2. Incentive Payments

City shall pay Contractor for the incentive portion of installation of energy savings measures based on actual costs of energy efficiency equipment and/or installation costs of eligible projects. Under no circumstances can incentive funds be used to cover administrative or other indirect costs. During the term of this agreement, City will pay incentives for projects governed by one or more funding sources, each with its own set of requirements. Contractor shall follow guidelines issued with Work Orders regarding eligibility, incentive levels, reporting requirements, and any other directives governing payment from specified funds.

Incentive Account: City shall pay Contractor incentive payments due under this Agreement in advance ("Incentive Advance") as follows:

(i) Wherever City determines, in its discretion, that Contractor will be assigned tasks that include payment of incentives, City may pay Contractor up to **\$1,100,000** to be used solely for payment by Contractor of incentives to its installation subcontractors, vendors, businesses or residents that become due and owing under the Agreement.

(ii) Contractor shall make incentive payments from the Incentive Advance to its installation subcontractors, vendors, businesses or residents as such payments become due and owing. Contractor will then invoice the City for such incentive payments made from the Incentive Advance.

(iii) Upon approval of such invoices, City shall restore to Contractor the invoiced amount, up to the original Incentive Advance balance, or such lesser amount as may remain in the program budget. When Contractor receives payment from the City for the incentive payments Contractor made from the Incentive Advance, Contractor shall promptly (and within no more than five business days) restore such amount to the Incentive Advance account to be utilized as provided in subsection (ii) above. At completion of the program (or depletion of the incentive payment budget), the Incentive Advance will have a zero balance.

(iii) Contractor shall, at all times, maintain the Incentive Advance funds separate and apart from all of its other accounts. Contractor may not use or apply any portion of the Incentive Advance for any purpose other than payment of incentive payments due and owing to installation contractors, vendors, or PG&E customers.

(iv) Monies received as Incentive Advance are subject to all provisions of the Agreement, including but not limited to, Section 11, "Payment does not Imply Acceptance of Work," Section 7, "Payment; Invoice Format," and Section 28, "Audit and Inspection of Records."

3. Payment Schedule

City shall pay Contractor within 30 days of City approval of an invoice. Payments are contingent on the satisfactory completion of all time and material tasks and/or installation projects.

**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
ICF Resources, L.L.C.**

This Agreement is made this 19th day of March, 2010 in the City and County of San Francisco, State of California, by and between **ICF Resources, L.L.C.**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the Department of the Environment ("Department") wishes to obtain Energy Efficiency, Renewable Energy, and Climate Professional Services; and,

WHEREAS, a Request for Proposal ("RFP") was issued on June 30, 2009 and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4012-09/10 on **July 20, 2009**; and

WHEREAS funding for portions of the Work under this Agreement will be provided through the San Francisco Energy Watch (SFEW) program with PG&E as approved by the California Public Utilities Commission in Decision D 09-09-047 dated September 24, 2009 and subsequent Rulings ordered under that Decision; and

WHEREAS funding for portions of the Work under this Agreement will be provided through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5 and the United States Department of Energy, including but not limited to an Energy Efficiency and Conservation Block Grant and a grant from the California Energy Commission State Energy Program through the Association of Bay Area Governments.

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are

not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

2. **Term of the Agreement.** Subject to Section 1, the term of this Agreement shall be from March 19, 2010 to July, 1, 2014.

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

4. **Services Contractor Agrees to Perform.** The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein. As part of this contract Work Orders will be prepared as follows: Work Orders will identify a detailed project scope, tasks, staffing plan, schedule, deliverables, budget (including incentive payment budget) and costs to complete the tasks, and specific requirements associated with the funding source(s) for the Work Order. Each Work Order shall identify the entire amount to which the Contractor shall be entitled to fully perform and deliver to the City all work identified in that Work Order.

5. **Compensation.** Compensation shall be made in monthly payments within 30 days after approval by the City of work, as set forth in Section 4 of this Agreement, that the Director of the **Department of the Environment**, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed as of the last day of the preceding month. In no event shall the amount of this Agreement exceed **Nineteen Million Dollars (\$19,000,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the **Department of the Environment** as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

6. **Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. **Payment; Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller. All amounts paid by City to Contractor shall be subject to audit by City. Records related to work under any task order funded in whole or in part by the federal government through ARRA shall be subject to audit by the United States Comptroller General, the appropriate Inspector General, or his or her representative(s). Records related to work under any task order funded in whole or in part through the San Francisco Energy Watch Program shall be subject to audit by duly authorized employees or agents of the California Public Utilities Commission and/or PG&E. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. **Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim. False claims or similar misconduct involving work under any Work Order funded in whole or in part by the federal government through ARRA is also subject to federal law, including the Federal False Claims Act, 31 U.S.C. §§ 3729-3733.

9. **Disallowance.** If Contractor claims or receives payment from City for a service, including for Work Orders funded in whole or part through the San Francisco Energy Watch Program or ARRA, and the reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor and its subcontractors shall comply with requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901. Contractor acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

10. **Taxes**

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

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

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

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

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

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

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

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

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

14. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the

manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

c. Nothing in this Agreement or any Work Order funded in whole or part through SFEW shall create any contractual relations between Contractor or its subcontractors and PG&E. All persons, if any, hired by Contractor shall be employees or subcontractors of Contractor and shall not be construed as employees or agents of PG&E in any respect

15. Insurance

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

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

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

3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage.

4) Professional liability insurance, if required, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

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

1) With respect to work performed under the SFEW, coverage shall: (A) by "Additional Insured" endorsement name as Additional Insureds both City and PG&E, and their officers, managers, directors, agents and employees, and PG&E's affiliates, subsidiaries, and parent company, with respect to liability arising out of or connected with the Work performed under this Agreement. In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language shall be listed under the Policy endorsement schedule: "City and PG&E, and their officers, managers, directors, agents and employees, and PG&E's affiliates, subsidiaries, and parent company with respect to liability arising out of or connected with the Work performed under this Agreement are additional insureds under a blanket endorsement." (B) With respect to tasks not reimbursable under SFEW, coverage shall name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) Coverage shall be endorsed to specify that Contractor's policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, and that any insurance or self-insurance maintained by City or PG&E shall not contribute with it.

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

d. All policies shall provide thirty (30) days' advance written notice to City (and with respect to work performed under SFEW, PG&E) of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices, signed by a person authorized by that insurer to bind coverage on its behalf, and copies of insurance documents shall be sent to City at the address specified in Section 25 "Notices to the Parties."

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

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

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

h. Before commencing any operations under this Agreement, Contractor shall do the following: (A) furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above, and (B) permit inspection of the original policies or furnish complete certified copies of the policies promptly at any time upon request of City. Failure to maintain insurance shall constitute a material breach of this Agreement.

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

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name PG&E, and its officers, managers, directors, agents and employees, and PG&E's affiliates, subsidiaries, and parent company, the City and County of San Francisco, its boards, commissions, officers and employees and the Contractor listed as additional insureds.

16. Indemnification.

a. **Mutual Indemnification.** Contractor (including its subcontractors) agrees to indemnify, hold harmless and defend both City, its Boards, Commissions, Officers and Employees and with respect to tasks associated with SFEW, PG&E, and their officers, managers, directors, agents and employees, and PG&E's affiliates, subsidiaries, and parent company from and against all claims, demands, losses, damages, costs, expenses and liability (legal, contractual, or otherwise), by whomever asserted which arise from or are in any way connected with any acts or omissions of Contractor (including its subcontractors) in carrying out the Work under the Agreement, except those arising by reason of the sole negligence or willful misconduct of City, its boards, commissions, officers and employees and/or (with respect to tasks associated with SFEW) of PG&E, its affiliates, subsidiaries, and parent company)

City agrees to indemnify, hold harmless and defend Contractor against all claims, demands, losses, damages, costs, expenses and liability (legal, contractual, or otherwise), by whomever asserted which arise from or are in any way connected with any acts or omissions of City in its obligations under this Agreement except those arising by reason of the sole negligence or willful misconduct of Contractor (including its subcontractors).

In the event of concurrent negligence of Contractor (including its subcontractors) and City, its officers, employees and/or agents, the liability for any and all claims for injuries or damages to persons and/or property arising from such concurrent negligence shall be apportioned under California law. Nothing in this Agreement shall constitute a waiver or limitation of any

rights that Contractor may have under applicable law in the event of concurrent negligence of persons or entities other than City.

b. **Infringement Protection.** Contractor represents to City that the material to be prepared under this Agreement will not infringe upon the copyright, patent or license, or otherwise violate the proprietary rights, including trade secret rights, of any person or entity. Royalties, license fees or other charges for patents, copyrights, licenses or other intellectual property for designs, processes, machinery, equipment, technology, published or unpublished data, information or materials, including but not limited to, manuals, computer programs or other deliverables furnished by Contractor for the Work, or for processes or methods employed by Contractor in performing the Work, shall be included in the Contract prices. Furthermore, except where City or PG&E have provided Contractor materials and such provided materials are alleged to have infringed, Contractor agrees to indemnify and hold City, its boards, commissions, officers and employees and PG&E (including their officers, managers, directors, agents and employees, and PG&E's affiliates, subsidiaries, and parent company) harmless from and against any and all liabilities, costs and damages arising out of any such infringement, and from any suit, demand or claim made against City or PG&E alleging any such infringement or violation. In addition to the foregoing, if there is any such suit, demand or claim, Contractor agrees at the option of City or PG&E (with respect to tasks associated with SFEW) and as soon as possible to either procure for City and PG&E the right to continue using the material, replace the material with non-infringing material, or modify it so it becomes non-infringing; provided, however that the replaced or modified material shall be equal to that contracted for hereunder and satisfactory to City and PG&E. Contractor further agrees to pay any judgment or reasonable settlement offer resulting from a suit, demand or claim, and pay any reasonable attorney's fees incurred by City and PG&E in defense against such suit.

17. Incidental and Consequential Damages.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND EXCEPT AS PROVIDED IN THIS SECTION 17, CONTRACTOR'S LIABILITY FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES OR FOR DAMAGES CAUSED BY CONTRACTOR'S NEGLIGENCE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED NINETEEN MILLION DOLLARS (\$19,000,000). CONTRACTOR'S LIABILITY LIMIT SET FORTH HEREIN SHALL NOT APPLY TO (1) CONTRACTOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 16 OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, CONTRACTOR'S OBLIGATION TO INDEMNIFY AND DEFEND CITY PURSUANT TO THE INFRINGEMENT INDEMNIFICATION OBLIGATIONS EXPRESSED THEREIN, (2) DAMAGES CAUSED BY CONTRACTOR'S GROSS NEGLIGENCE OR INTENTIONAL OR WILLFUL MISCONDUCT, (3) CLAIMS OR GENERAL DAMAGES THAT FALL WITHIN THE INSURANCE COVERAGE OF THIS AGREEMENT, (4) STATUTORY DAMAGES SPECIFIED IN THIS AGREEMENT, AND (5) WRONGFUL DEATH CAUSED BY CONTRACTOR.

18. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF

WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Left Blank by Agreement of the Parties (Liquidated Damages).

20. Default; Remedies

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

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

- | | |
|---|---|
| 8. Submitting False Claims; Monetary Penalties. | 37. Drug-free Workplace Policy |
| 10. Taxes | 53. Compliance with Laws |
| 15. Insurance | 57. Protection of Private Information of City |
| 24. Proprietary or Confidential Information of City | 58. Graffiti Removal |
| 30. Assignment | |

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

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

4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

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

expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

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

21. Termination for Convenience

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

b. Upon receipt of the notice 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 shall include, without limitation:

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

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

3) Terminating all existing orders and subcontracts.

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

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

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

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

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

1) The reasonable time and materials charges due Contractor under this Agreement (as set forth in Appendix B) for all services and other Work City directed Contractor to perform and customer incentives paid by the Contractor prior to the specified termination date, for which services or Work or customer incentives City has not already tendered payment. Contractor may also recover the reasonable cost of preparing the invoice.

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

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

4) A deduction for the account balance of incentive advances, if any, made by City to Contractor for customer incentives not due and owing prior to the specified termination date. A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

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

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

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

22. Rights and Duties upon Termination or Expiration

This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8.	Submitting False Claims; Monetary Penalties	24.	Proprietary or confidential information of City
9.	Disallowance	26.	Ownership of Results
10.	Taxes	26.	Works for Hire
11.	Payment Does Not Imply Acceptance of Work	28.	Audit and Inspection of Records
13.	Responsibility for Equipment	48.	Modification of Agreement.
14.	Independent Contractor; Payment of Taxes and Other Expenses	49.	Administrative Remedy for Agreement Interpretation.

15.	Insurance	50.	Agreement Made in California; Venue
16.	Indemnification	51.	Construction
17.	Incidental and Consequential Damages	52.	Entire Agreement
18.	Liability of City	56.	Severability
		57.	Protection of Private Information

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

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

24. Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City (including trade secrets and confidential information about specific PG&E Customers within the meaning of City's SFEW Agreement with PG&E) and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City and/or PG&E. Contractor agrees to hold all such information disclosed by City or PG&E to Contractor in confidence and to use, or require its subcontractors to use such information solely for the purpose of performing services and Work under this Agreement and in the manner specified in this Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data. Contractor shall require its employees and the employees of its subcontractors, who will perform Work or services funded by SFEW under this Agreement to sign a non-disclosure agreement in the form attached hereto as Appendix C, and shall deliver the signed original copies to City.

Contractor's duty to protect information described in the paragraph immediate above does not apply to information that: (a) was in the public domain at the time it was disclosed or falls within the public domain, except through a breach of this Agreement; or (b) is or becomes known by the Contractor or any of its associated companies from a source other than the City or PG&E without breach of this Agreement by the Contractor; or (c) is required by law, but only to the extent that such disclosure is so required by law, and only after the City has been notified in writing and has been provided a reasonable opportunity to take appropriate action to protect its legal interest in the Confidential Information.

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

To City:
Ann Kelly
Department of the Environment
City and County of San Francisco
11 Grove Street
San Francisco, CA 94102
ann.kelly@sfgov.org

To Contractor:
Rahul Young
ICF International
620 Folsom Street, Suite 200
San Francisco, CA 94107
ryoung@icfi.com

Any notice of default must be sent by registered mail.

26. Ownership of Results/Works for Hire. Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with Work funded exclusively under SFEW ("PGE Results") become, after approval and acceptance by City, the property of PG&E. Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with tasks under this Agreement that are not solely funded under SFEW, including, Work funded in whole or part by the U.S. Department of Energy under ARRA ("City Results") shall become the property of and will be transmitted to City. Neither Contractor nor its Subcontractors shall retain any property rights in PG&E Results or City Results. Contractor shall transmit PG&E Results and City Results to City for its inspection, approval and acceptance and shall fully cooperate and do all things reasonably necessary to allow PG&E and/or City and/or to claim sole ownership of the Results. However, Contractor may retain and use copies of PG&E Results and City Results for reference and as documentation of its experience and capabilities.

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, or, if funded in whole or part by the U.S. Department of Energy under ARRA, to the appropriate Federal agency as directed by City, and agrees to provide any material

and execute any documents necessary to effectuate such assignment. City shall, to the extent required by SFEW, assign all its right, title, and interest in the patents, copyrights and other intellectual property rights in such works to PG&E or the federal government, as appropriate. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

Contractor acknowledges that the US Department of Energy shall have a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, for federal Government purposes; (a) the copyright in City Results developed under this Agreement in whole or part by ARRA funding; and (2) any rights of copyright to which Contractor or its subcontractors acquire in whole or part by ARRA funding. Contractor and its subcontractors shall fully cooperate and do all things reasonably necessary to effectuate such license.

27. Left Blank by Agreement of the Parties.

28. Audit and Inspection of Records.

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

(b) Without limitation of subsection (a), in accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the United States Comptroller or his or her representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his or her representative to (1) examine any records that directly pertain to, and involve transactions relating to, this Agreement; and (2) interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA. Contractor shall include this subsection (b) in all of Contractor's agreements with its subcontractors from whom the Contractor acquires goods or services in its execution of the ARRA funded work.

29. Subcontracting. Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither Contractor nor City shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

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

31. Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions

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

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

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

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

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

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

33. Local Business Enterprise Utilization; Liquidated Damages

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

b. **PG&E Supplier Diversity Program.** To the extent consistent with federal, state and local laws applicable to this Agreement and with respect to tasks associated with SFEW, Contractor shall comply with PG&E's Supplier Diversity Purchasing Policy and Policy Regarding Utilization of Small Business Concerns and Small Disadvantaged Business concerns, attached as Exhibit 1 and 2 to this Agreement.

c. **U.S. Department of Energy Small, Disadvantaged and Women-Owned Business Participation Requirements.** Contractor shall comply with the requirements of 10 CFR § 600.236 (e) for Work funded in whole or part by the U.S. Department of Energy under ARRA.

34. **Nondiscrimination; Penalties**

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

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

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

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

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this

Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

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

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

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

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

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

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

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

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

43. Requiring Minimum Compensation for Covered Employees

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

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep

informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

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

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

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

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

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

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

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

44. Requiring Health Benefits for Covered Employees

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

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

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

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

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

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

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

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

- h. Contractor shall keep itself informed of the current requirements of the HCAO.
- i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.
- k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
- m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program.

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

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

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

2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry

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

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

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

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

6) Set the term of the requirements.

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

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

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

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

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

e. Liquidated Damages. Contractor agrees:

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

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

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

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

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

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

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

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

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

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

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

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

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

48. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a

cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

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

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

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

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

53. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such federal, state and local laws and regulations applicable to the Work to be performed under this Agreement, as they may be amended from time to time. Contractor shall obtain any required permits and licenses, serve notices, arrange for inspection and pay fees and deposits. Equipment and material furnished hereunder shall be so designed and fabricated that when installed it will comply with applicable laws, rules, and regulations. Expenses incurred in complying with these requirements shall be included in the Contract prices. Unless prohibited by law, Contractor shall hold City, its boards, commissions, officers and employees (and with respect to tasks associated with SFEW) PG&E, including its officers, managers, directors, agents and employees, and PG&E's affiliates, subsidiaries, and parent company, harmless from any liability, fine or penalty incurred as a result of Contractor's failure to comply with applicable legal and regulatory requirements, local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

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

55. Left Blank by Agreement of the Parties (Supervision of Minors)

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

57. Protection of Private Information.

a. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

b. Contractor shall utilize PG&E's approved data transfer protocols to transfer any confidential proprietary information obtained from or about PG&E and its customers, including but not limited to any information or data containing PG&E Customer account numbers.

58. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

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

59. Food Service Waste Reduction Requirements. Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the

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

60. Left Blank by Agreement of the Parties (Slavery Era Disclosure)

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

62. Force Majeure

The performance of the obligations of the Parties hereunder shall be suspended by the occurrence of any unforeseeable event beyond the control of the Parties, such as acts of God, war, mobilization, riot, sabotage, explosion, earthquakes, casualty, power failure, inability to obtain suitable and sufficient labor or material, or law or regulations restricting performance. In the event either Party claims that performance of its obligations was prevented or delayed by any such cause, that Party shall promptly notify the other Party of that fact, and of the circumstances preventing or delaying performance. Such Party so claiming a cause for delayed performance shall endeavor to take reasonable measures to remove the disability or obstacle to performance and resume operations at the earliest possible date.

63. No Endorsement

Contractor shall not indicate, and shall direct its Subcontractors not to indicate, in any form of written, verbal or electronic advertisement or in any other business or marketing development efforts, that its selection as Contractor under this Agreement constitutes an endorsement by PG&E of Contractor (or Subcontractor(s)). Contractor shall not represent, and shall prohibit its Subcontractors from representing, that PG&E's verification, inspection, and/or review of the design, construction, operation, or maintenance of Contractor (or Subcontractor(s)) Work under this Agreement constitutes a representation or a confirmation of the economic or technical feasibility, operational capability, or reliability of such measures.

64. Payment and Performance Bond. Wherever Contractor directly, or through a subcontractor, intends to spend over \$100,000 on materials or equipment, City may require Contractor to obtain a payment and performance bond at City's cost, from a surety acceptable to City, in the amount specified by City for up to 100 percent of the cost of materials or equipment ordered by Contractor or its subcontractor(s). Contractor shall obtain such bond within 15 days of City's request. City shall reimburse Contractor based on the surety company's invoice.

65. **Fidelity Bond for Incentive Advances.** Wherever Contractor receives advances under this Agreement or Work Orders issued hereunder for the payment of rebates or other incentives or for any other reason, City may require Contractor to obtain and maintain in force a fidelity bond naming the City as payee or obligee in a form acceptable to the City's Risk Manager and in an amount that City reasonably determines would cover the risk of loss, misuse or misappropriation of such advances.

66. **Time is of the Essence.** Contractor shall commit adequate resources to complete the Work within the project schedule specified in this Agreement and Work Orders issued hereunder.

67. **License of Pre-existing Material.** The term "Contractor Property" shall mean all pre-existing material, including, but not limited to, any products, software, materials and methodologies proprietary to Contractor and provided by Contractor or its suppliers and any trade secrets, know-how, methodologies and processes related to Contractor's products or services, all of which shall remain the sole and exclusive property of Contractor or its suppliers. Subject to the receipt of payment in full and to the terms of this Agreement, Contractor grants to the City a non-exclusive, non-transferable, perpetual license to use the Contractor Property contained in the Deliverables provided hereunder for purposes of this Agreement.

68. **Copyright Notice.** With respect to tasks associated with SFEW, Contractor shall place the following notice in the locations specified by PG&E on all marketing and promotional materials, all other materials for distribution to the general public and all other materials created in connection with services performed under this Agreement that the PG&E Project Manager designates:

(1) The copyright symbol or the word "Copyright" followed by the year in which the material is produced and the words "Pacific Gas and Electric Company;" and

(2) The text, "Funding for these materials is provided by California utility customers and administered by Pacific Gas and Electric Company, under the auspices of the California Public Utility Commission."

69. **Advertising** Contractor shall neither advertise nor allow advertising at the worksite(s) without written approval from City. With respect to tasks associated with SFEW that is not also funded in whole or part by ARRA, City may require Contractor to display a standard sign advertising the SFEW at all worksites. Signage at projects with Work funded in whole or part by ARRA shall conform to the requirements of applicable federal laws and regulations.

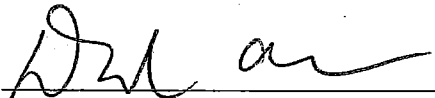
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

Recommended by:

ICF Resources, L.L.C




David Assmann
Acting Director
Department of the Environment

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

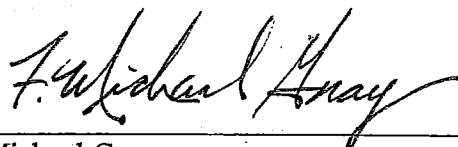
Approved as to Form:

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Dennis J. Herrera
City Attorney

By: 

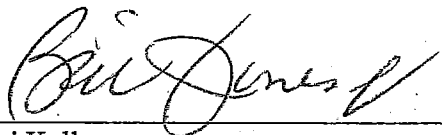
Catharine Barnes
Deputy City Attorney



F. Michael Gray
Vice President

Approved:

ICF Resources, L.L.C
620 Folsom Street, #200
San Francisco, CA 94107



Naomi Kelly
Director of the Office of Contract
Administration, and
Purchaser

City Vendor # 57811

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: PG&E Non-Disclosure Agreement
PG&E Exhibits
 1. Supplier Diversity Purchasing Policy
 2. Policy Regarding Utilization of Small Business Concerns and Small Disadvantaged Business Concerns

Appendix A

Services to be Provided by Contractor ICF Resources, LLC

I. DESCRIPTION OF SERVICES

The services described in the Scope of Work below are examples of the wide range of assistance that the San Francisco Department of the Environment anticipates will be needed during the term of the Agreement. As indicated in Request for Proposals for Energy Efficiency, Renewable Energy, and Climate Professional Services dated June 30, 2009, the Department's Climate and Energy program is divided into three target areas:

- **Energy Efficiency** – The Department has been implementing energy efficiency incentive programs for the private sector since 2002 and working on improved energy codes. San Francisco's 2002 Electricity Resource Plan set a 107 MW reduction goal by 2012. To date, target markets have been small and medium businesses and multifamily properties. Single family homes may be incorporated in the future.
- **Renewable Energy** – CCSF has set ambitious goals of achieving 50 MW of in-city renewable energy generation by 2012. San Francisco's Department of the Environment leads private sector renewable energy outreach efforts to help the city meet these goals. CCSF is aggressively pursuing a number of different renewable energy technologies, including wave and tidal power, solar photovoltaics, solar water heating, urban wind, geothermal heat pumps and combined heat and power.
- **Climate Change** – CCSF is committed to the following greenhouse gas emissions reduction goals: 20% below 1990 levels by 2012, 40% by 2025 and 80% by 2050. In order to meet these goals San Francisco's Department of the Environment is focused on achieving GHG reductions through all its major programs from specific energy and climate work to waste reduction, alternative transportation, and urban forestry.

Funding for work under this Agreement is expected to come from a combination of Federal, State, and foundation or other sources, including: California Public Utilities Commission (CPUC)-authorized ratepayer funds that the City administers under a contract with Pacific Gas and Electric Company (PG&E); American Recovery and Reinvestment Act (ARRA) grants; and budget appropriations and grants received by the Department of the Environment. Work under the contract will be assigned on an as-needed basis through Work Orders. The specific terms and conditions of performing the work will vary depending on the sources of funding for tasks to be accomplished. Specifically:

(1) The San Francisco Energy Watch (SFEW) Program operates under a contract between CCSF and Pacific Gas and Electric Company (PG&E). Any services Contractor is called upon to perform for SFEW will be governed by the terms and conditions of the PG&E contract, and subject to change by decisions of the California Public Utilities Commission (CPUC). The relevant terms and conditions, not already stated in this agreement, to which Contractor must comply when performing Work on SFEW tasks will be included the Work Orders governing those tasks.

Under the PG&E contract, CCSF is held to a cost-effectiveness standard for delivery of kilowatt-hour and therm savings goals. Contractor shall assist Department in meeting this standard and agrees to work collaboratively with Department toward continual improvement of program cost-effectiveness to reach

PG&E contract goals. PG&E may increase or decrease actual funding for the SFEW based on Department performance in achieving goals cost-effectively.

(2) City may fund portions of the Work with Federal ARRA grants. Contractor must comply with requirements for ARRA grants when performing Work funded under ARRA. Where Work under the Contract is funded in whole or part by Energy Efficiency and Conservation Block Grant (EECBG) dollars, Contractor must comply with the requirements for subgrantees set forth in the U.S. Department of Energy's "Assistance Agreement" with the City, which will include: (a) terms and conditions for subgrantees set forth in 10 CFR part 600.200 (Subpart C, Uniform Administrative Requirements for Grants to Local Governments) (<http://ecfr.gpoaccess.gov>), (b) special program regulations for work funded under American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, including regulations that may be issued by the Office of Management and Budget and the U.S. Department of Energy, (c) national policy assurances (http://management.energy.gov/business_doe/business_forms.htm), and (d) terms and conditions set forth in the EECBG award document. U.S. Department of Energy approval is required for contracts using EECBG and other ARRA monies. City and Contractor intend to amend this contract to add the terms and conditions applicable to Work Orders to be funded with EECBG and other ARRA monies prior to issuing such Work Order.

(3) Work funded exclusively by unrestricted grants and other sources is subject to the City's standard terms and conditions.

The Scope of Work below is to be used as a general guide and is not intended to be a complete list of all work necessary to fulfill the Department's needs. The list is not exhaustive, and consultants may be called upon for other services within their expertise and the scope of this Agreement.

Contractor will not begin any work on any project until the Department has issued a Work Order as set forth in Section 4 of the Agreement.

SCOPE OF WORK PART 1: Implementation of Incentive Programs

The Department operates SFEW with funding authorized by the California Public Utilities Commission under a contract with PG&E. The program processes approximately \$3 million of incentive payments annually and serves the commercial and multi-family sectors. The program will add new market sectors and new technologies during the course of this contract as determined by the Department.

Beginning in 2010, the SFEW program will be augmented by ARRA funding and other funding sources. Also in 2010, the City intends to establish a tax lien financing program to fund energy improvements for privately owned buildings. Contractor will be required to track projects and funding for all Work Orders in the same database as SFEW projects, but report on specific Work Orders in accordance with separate funding requirements.

Contractor, working closely with Department staff, will perform the following tasks in support of Department's various incentive programs and under the terms governing each funding source.

A. Administrative and Technical Support

1. Assist CCSF in identifying commercial, non-profit, multi-family, and single-family energy projects for program participation.
2. Recruit installation contractors with specific outreach to small local businesses and businesses that employ local workers, train them on program procedures and standards, and oversee their performance.

3. Receive and process project applications, checking for completeness and accuracy, methodologies used, and reasonableness of savings estimates and construction cost estimates.
4. Perform quality control inspections of project sites applying protocols identified by CCSF to meet the requirements of funders and administrators such as the California Public Utilities Commission (CPUC), PG&E, U.S. Department of Energy, California Energy Commission and others.
5. Enter project data into a database for tracking and reporting. Information captured includes, but is not limited to, site-specific information, contact information, utility account information, hours of operation, recommended measures installed, projected energy savings in kW, kWh and therms, project costs, incentive amount, and customer cost.
6. Issue incentive payments to contractors in amounts established by CCSF through a cash revolving fund for quick payment of approved and completed projects.
7. Provide CCSF with weekly updates and monthly invoices and reports on all program activities as required.
8. Assist in development, upgrade, and/or maintenance of a customer database system with the capacity to meet new and changing information, along with continued tracking and reporting of utility account numbers and usage data, rate schedules, measures installed, rebates, etc.
9. Conduct customer satisfaction surveys and analysis and assist in development of after-market services including enforcement of warranties for the measures installed.
10. Participate in evaluation activities as directed by CCSF.
11. Perform other tasks necessary for successful program implementation.

SCOPE OF WORK PART 2: General Consulting Services (B through M)

B. Regulations and Policy

1. Assist in the development of policies, regulations, and ordinances. This may include identifying goals and strategies of forming new public policy or amending existing policy as well as quantifying potential impacts and performing studies needed to support the policy development. Impacts to be quantified may include energy savings, reduction in greenhouse gases, workforce needs, and local economic development.

C. Program Design and Development

1. Identify new programs/projects or improve existing programs that would be appropriate for CCSF to undertake to promote renewable energy, reduce energy consumption and conserve resources. These could include either new construction or retrofit in both the residential and non-residential sectors, or in targeted segments within each sector. Under the guidance of Department staff, prepare proposals, reports, data analysis, evaluations, or other documents in support of program development or program implementation.
2. Assist staff on development of new program design or improving existing program design through needs assessment for customer groups; pilot project design and evaluation; and impact

potential. The work may include advising the staff on cost-efficiency, market penetration strategies, the merits of program alternatives based on renewable energy or energy savings potential, success elsewhere of similar programs, ease of monitoring and verification, developing standards and protocols, etc.

3. Provide assistance in developing technical scopes of work for energy auditing, resource assessment, design, materials, equipment, construction management, and related services.
4. Review professional services proposals for audit, assessment, design, materials, equipment, and construction management services for completeness and cost-efficiency.
5. Assist staff in adapting existing procedures and standards or develop new ones for each phase of program implementation. Phases may include auditor training, sales protocol, audit protocol, audit reporting, design specifications, standardized price estimates, customer contracts, financing forms, construction contracts, construction management, product warranties and customer evaluation forms.
6. Prepare financial modeling and business case development studies for efficiency and/or renewable power generation planning and implementation.

D. Program Implementation

1. Assist CCSF in identifying commercial, non-profit, multi-family, and single family properties as well as other types of sites that meet requirements for energy or climate projects undertaken by the Department.
2. Assist in developing and expanding a core of vendors/contractors to participate in programs with focus on local businesses and businesses that employ local workers.
3. Work with existing financing mechanisms for customers to receive funding for capital investments related to improvements.
4. Assist in development, upgrade, and/or maintenance of a customer database system with the capacity to track information other than the data listed in Part I.A.8.
5. Develop and implement a quality assurance and quality control protocol to meet the requirements of funders and administrators such as the California Public Utilities Commission (CPUC), PG&E, U.S. Department of Energy, California Energy Commission and others.
6. Track and report to CCSF on all program activities as required. Reports may include data about number of customers contacted, audits performed, reports presented, jobs accepted, and installations completed as well as estimates of monthly and to-date kW, kWh, and therm savings, costs, costs to customers, types of buildings, and other data as requested by CCSF.
7. Assist in the development of surveys, analysis, forecasts and after-market services including enforcement of warranties for the measures installed for projects other than those governed under Part I.A above.
8. Create reports for customers containing basic project information including site-specific information, contact information, language needs, utility account information and hours of operation. Reports could provide detailed energy efficiency and/or renewable energy recommendations, estimates of gross project costs, incentives provided and estimated costs to the

customer. Reports may also include savings summaries for recommended measures installed, including projected energy savings in kW, kWh and therms, as well as CO₂ emissions reductions and cost savings values of reduced energy use, simple payback, ROI and other financial information.

9. Participate in program evaluation activities as directed by CCSF.

E. Technical Assistance

1. Develop calculation tools and technical work papers.
2. Conduct pre- and post-installation verification of retrofits.
3. Perform energy savings analysis, including due-diligence reviews of renewable energy technologies and energy efficiency measures.
4. Conduct audits/assessments of residential and commercial properties. Audits/assessments may include basic information about the building; a detailed account of energy using equipment and hours of operation; a detailed list of no- and low-cost recommendations, and retrofit/installation recommendations. Systems covered in an audit may include lighting, lighting controls, heating, ventilating, and air conditioning (HVAC), HVAC controls, refrigeration, natural gas boilers, and water heating systems and renewable energy potential.
5. Review audit reports for completeness, methodologies used, and reasonableness of savings estimates and construction cost estimates.
6. Conduct building performance tests using techniques such as blower doors, duct blasters, and infrared cameras; prepare detailed reports that include recommendations for upgrades including a cost-effective analysis of all options available.
7. Prepare feasibility studies that include estimating the cost and energy savings of the proposed measures, the operations and maintenance (O&M) cost impact, life cycle cost and anticipated carbon savings. Analyses may include developing energy use baselines, creating load profiles, and producing schematics. These analyses may necessitate the use of computer modeling techniques, securing and analyzing customer meter data, the installation of specialized monitoring equipment, and post-construction site visits.
8. Identify issues and estimate costs associated with meeting applicable building codes, fire codes, asbestos abatement, inspection, and waste disposal.
9. Prepare feasibility studies for an integrated approach to building retrofits (alternative energy strategies, recycled and low-emitting content materials, indoor air quality, water conservation and recycling opportunities).
10. Conduct pre-feasibility, feasibility, technical potential and market studies for renewable energy technologies, including cogeneration, fuel cells, solar, urban wind, geothermal heat pumps, and wave and tidal power. These could include market penetration potential, evaluation of market sectors, program performance by market sector, etc.
11. Provide services in languages other than English.

F. Climate Inventory and Certification

1. Assist staff in updating departmental, municipal and or community-wide greenhouse gas emissions inventories. Phases include data collection, organizational management, analysis and final reporting.
2. Review greenhouse gas emissions inventories conducted by the Department. The Department will be responsible to correct any deficiencies discovered by the review. Contractor must be eligible or licensed to certify the inventory to the California Climate Action Registry and The Climate Registry. Contractor may also be requested to report to other registries as directed by the Department.

G. Resource Mapping

1. Develop high-resolution, citywide sustainable energy resource and climate data map(s).
2. Use aerial imagery, 3-D modeling and other tools to evaluate the renewable energy potential for buildings within CCSF, taking into consideration the local resource, building/roof materials, location, surface obstructions, shading objects, permitting requirements, and other factors affecting buildings' ability to harness renewable energy.
3. Utilize existing municipal and community-wide energy and transportation data points and assemble other relevant climate data (as specified by San Francisco Department of Environment) into a community wide climate and energy map to assess appropriate neighborhood and community-wide climate policies and assess community-wide vulnerability.
4. Develop web sites and/or web-based tools for displaying energy and climate map(s).
5. Create open source databases allowing CCSF to access data on renewable energy potential of addresses within CCSF.
6. Create open source database and or build on existing in house GIS mapping database to house all GHG inventory and other climate data with built-in ability to add data categories in the future.

H. Marketing

1. Conduct market potential studies. These could include market penetration potential, evaluation of market sectors, program performance by market sector, etc.
2. Adapt existing marketing materials or develop new ones including materials that are appropriate to San Francisco's culturally and linguistically diverse community. Marketing materials may include emails, brochures, leaflets, posters, web sites, presentations, press releases, print advertising.
3. Implement marketing plans including: producing marketing materials, distributing materials, scheduling press events and marketing events, and making presentations at events.
4. Develop strategic outreach plan to include various residential and commercial sectors, specific technologies, vendor groups, etc.
5. Provide services in languages other than English.

I. Information and Training

1. Design and develop informational and training programs targeting various sectors including: real estate developers, financiers, building owners, building managers, design professionals, and maintenance professionals.
2. Assist CCSF staff in developing informational presentations, training sessions, and training materials.
3. Conduct workshops in support of programs.
4. Train vendors and contractors in whole building performance, new technologies, and integrated approaches to building improvements.
5. Provide services in languages other than English.

J. Design and Specification

1. Review of contractor or project design documents for approach and completeness.
2. Specify the task objective and scope of work for energy measures, water use, indoor environmental quality, renewable energy options, combined heat and power, and building materials.
3. Specify the quantities and types of equipment to be installed and simple drawings noting where they are to be installed.
4. Provide specifications for materials, installation, and commissioning (including training).
5. Prepare mechanical and electrical drawings and specifications to accurately describe the implementation and commissioning of the recommended measures. Include alternative efficiency and green building strategies, for example, the use of daylighting, indirect lighting, high efficiency motors, renewable energy, water reuse, etc.

K. Construction Management

1. Provide construction administration and inspection such as inspecting work progress and reviewing contractor's construction drawings to determine adherence with the recommended design.
2. Prepare punch lists and review execution of punch lists and other construction management tasks as necessary.
3. Conduct review of service levels provided during construction management for consistency with standard practices, and completeness.
4. Locate contractors who are sensitive to the cultural expectations of the neighborhood and who will commit to City goals for workforce development and hiring locally owned businesses.

L. Building Commissioning Assistance

1. Prepare and/or review commissioning plans for projects. Plans may describe the tasks of the commissioning agent, such as design documentation; planning and conducting functional

performance testing; operations and maintenance training and documentation; and other tasks related to commissioning.

2. Prepare commissioning language to be included in construction bid documents to specify responsibilities of the construction contractors.
3. Serve as commissioning agent for some smaller projects. Duties may include preparing a commissioning plan and implementing each element, including on-site functional testing and training for building engineers.

M. Other Tasks

1. As programs are developed and materialize, consultants may be requested to provide expertise in connection with other Energy Efficiency, Renewable Energy and Climate Change programs and initiatives.

II. REPORTS

Contractor shall submit written reports as requested by the Department of the Environment. Format for the content of such reports shall be determined by the Department of the Environment. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

III. DEPARTMENT LIASON

In performing the services provided for in this Agreement, Contractor's liaison with the Department of the Environment will be Ann Kelly, Energy Efficiency Programs Manager, unless otherwise notified.

**Appendix B
Calculation of Charges
ICF Resources, L.L.C.**

During the term of this contract, City shall pay Contractor on a time and material basis for labor and indirect costs; and, when working on an incentive-payment program, in accordance with the terms described in Section 2 below. Tasks will be assigned using Work Orders, which will describe tasks and indicate a not-to-exceed dollar amount for completion of tasks.

1. Time and Materials Payments

Time: The City shall make payment for Contractor's labor following receipt of an invoice indicating project and tasks, and listing personnel; hourly rate, and number of hours worked. Billing rates reflect labor plus indirect costs. Rates should not exceed the amounts provided in Table B-1 below for the first year of the contract; with rate increases of up to 3% during each successive year, upon written approval of the Program Manager.

TABLE B-1: FEE SCHEDULE

Position/Job Class (ICF)	\$/Hour
Officer-in-Charge	275
Manager	200
Program Manager	180
Project/Construction Manager	180
Project Manager	150
Architect	160
Senior Engineer	160
Associate Engineer	140
Auditor	130
Junior Auditor	80
Junior Professional Staff	120
Data Analyst	100
Marketer	100
Research/Writer	100
Administrative	100
Clerk	80
Position/Job Class (Subcontractors)	\$/Hour
Stantec	200
Enovity	230
Simon & Associates	235
Sustainable Design Resources	150
Construction Management West	160
Urban Solutions	80
Jungle Communications	175

Materials/Other Direct Costs: Contractor must provide receipts and/or other documentation of proof of expenditures for charges for materials purchased in performance of project tasks and for other direct costs. Direct charges shall be invoiced at cost.

Subcontractor Costs: Contractor's invoice must include all Subcontractor charges including subcontractor(s)' invoice(s) for time as defined above, and receipts and/or other documentation of proof of expenditures for materials and other direct costs. Contractor's invoice may include an additional administrative fee of 5% on Subcontractor costs, listed clearly as a separate charge.

2. Incentive Payments

City shall pay Contractor for the incentive portion of installation of energy savings measures based on actual costs of energy efficiency equipment and/or installation costs of eligible projects. Under no circumstances can incentive funds be used to cover administrative or other indirect costs. During the term of this agreement, City will pay incentives for projects governed by one or more funding sources, each with its own set of requirements. Contractor shall follow guidelines issued with Work Orders regarding eligibility, incentive levels, reporting requirements, and any other directives governing payment from specified funds.

Incentive Account: City shall pay Contractor incentive payments due under this Agreement in advance ("Incentive Advance") as follows:

(i) Wherever City determines, in its discretion, that Contractor will be assigned tasks that include payment of incentives, City may pay Contractor up to \$400,000 to be used solely for payment by Contractor of incentives to its installation subcontractors, vendors, businesses or residents that become due and owing under the Agreement.

(ii) Contractor shall make incentive payments from the Incentive Advance to its installation subcontractors, vendors, businesses or residents as such payments become due and owing. Contractor will then invoice the City for such incentive payments made from the Incentive Advance.

(iii) Upon approval of such invoices, City shall restore to Contractor the invoiced amount, up to the original Incentive Advance balance, or such lesser amount as may remain in the program budget. When Contractor receives payment from the City for the incentive payments Contractor made from the Incentive Advance, Contractor shall promptly (and within no more than five business days) restore such amount to the Incentive Advance account to be utilized as provided in subsection (ii) above. At completion of the program (or depletion of the incentive payment budget), the Incentive Advance will have a zero balance.

(iii) Contractor shall, at all times, maintain the Incentive Advance funds separate and apart from all of its other accounts. Contractor may not use or apply any portion of the Incentive Advance for any purpose other than payment of incentive payments due and owing to installation contractors, vendors, or PG&E customers.

(iv) Monies received as Incentive Advance are subject to all provisions of the Agreement, including but not limited to, Section 11, "Payment does not Imply Acceptance of Work," Section 7, "Payment; Invoice Format," and Section 28; "Audit and Inspection of Records."

3. Payment Schedule

City shall pay Contractor within 30 days of City approval of an invoice. Payments are contingent on the satisfactory completion of all time and material tasks and/or installation projects.

PG&E SUPPLIER DIVERSITY PURCHASING POLICY

CONTRACTORS AND SUBCONTRACTORS OF ALL TIERS MUST COMPLY WITH PG&E'S SUPPLIER DIVERSITY PURCHASING POLICY IN THE AWARD OF ALL SUBCONTRACTS AND SUB-SUBCONTRACTS. This policy requires that Women, Minority and Disabled Veteran Business Enterprises (WMDVBEs) shall have the maximum practicable opportunity to participate in the performance of the Work.¹

Contractor shall provide, along with its proposal, a separate, signed Subcontracting Plan consisting of either: (i) a specific list of Subcontractors (including sub-subcontractors) that will participate in the performance of the Work, on the form attached as Exhibit 1-A; or (ii) a statement setting forth the Contractor's goals for WMDVBE subcontracting of all tiers and setting forth such additional good faith efforts Contractor and Subcontractors will employ to increase the participation of WMDVBE in the performance of the Work.

In the event Contractor has not submitted a list of Subcontractors with its proposal, prior to requesting bids for any Subcontract, Contractor and Subcontractor shall submit to PG&E's Procurement Specialist or Contract Administrator, on the form attached as Exhibit 1-A, a list of prospective WMDVBEs that will be invited to compete for such Subcontracts.

Contractor shall submit its subcontracting spend with women, minority and service disabled veteran owned suppliers on a quarterly basis using PG&E's electronic reporting system located at <https://www.pgesupplierdiversity.com/pge/login.asp>.

To establish a user ID, Contractor shall request via email to: diversity@pge.com.

¹ WMDVBEs must be verified pursuant to the procedures prescribed in Section 2 of CPUC General Order 156.

- * Refer to Instructions/Codes/Definitions.
- ** V = Subcontractor is a **verified** WBE, MBE certified by the CPUC Clearinghouse, or a **verified** DVBE certified by the Office of Small Business Certification and Resource.
- *** NV = Subcontractor is **not verified**.

STEP-BY-STEP INSTRUCTIONS

1. Complete column numbers 1-7 and return this form with your bid proposal.
2. Please attach copies of WMDVBE Subcontractor s/subsuppliers certifications with your bid proposal.
3. Complete column number 8 with the actual payments to WMDVBE subcontractor s/subsuppliers for the PG&E work that was performed.
4. Send a copy of this form no later than the 15th day of each month for the previous month to: Supplier Diversity Office, Purchasing Department, Pacific Gas & Electric Company, 245 Market Street, Mail Code N5D, P.O. Box 770000, San Francisco, California, 94177, or (415) 973-2553 (fax).

DEFINITIONS AND CODES:

WBE Women Business Enterprise: A business enterprise that is at least 51 percent owned by a woman or women, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more of those individuals. Must be certified by the California Public Utilities Commission (CPUC) Clearinghouse. For more information call the WMBE Clearinghouse, (800) 359-7998.

MBE Minority Business Enterprise: A business enterprise that is at least 51 percent owned by a minority group or groups, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority-group individuals, and whose management and daily business operations are controlled by one or more of those individuals. Must be certified by the California Public Utilities Commission (CPUC) Clearinghouse. For more information call the WMBE Clearinghouse, (800) 359-7998.

Minority Status:	001	African American Male	008	Hispanic American Female
	002	African American Female	009	Caucasian Male
	003	Asian Pacific American Male	010	Caucasian Female
	004	Asian Pacific American Female	011	Multi- Status
	005	Native American Male	012	Other Groups
	006	Native American Female	013	Small Business Enterprise
	007	Hispanic American Male	014	Service Disabled Veteran Business Enterprise

1151

African Americans Persons having origins in any black racial groups of Africa.

Asian Pacific Americans Persons having origins in Asia or the Indian Subcontinent, including, but not limited to, persons from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, India, Pakistan, and Bangladesh.

Native Americans Persons having origin in any of the original peoples of North America or the Hawaiian Islands, in particular, American Indians, Eskimos, Aleuts, and Native Hawaiians.

Hispanic Americans All persons of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, or other Spanish culture or origin.

Caucasian Includes all people of European and North African descent.

Multi-Status An enterprise that is wholly owned and controlled by a combination of minorities or women but whose majority ownership (at least 51%) is not vested with any one of these individuals.

Other Groups Groups whose members are found to be socially and economically disadvantaged by the Small Business Administration pursuant to Section 8 (a) of the Small Business Act as amended (15-U.S.C. 637 (d)), or by the Secretary of Commerce pursuant to Section 5 of Executive Order 11625.

Small Business Enterprise (SBE) A business defined pursuant to Section 3 of the Small Business Act (SBA) and relevant regulations pursuant thereto. If unsure, please contact your local Small Business Administration office for clarification.

Service Disabled Veterans Business Enterprise (DVBE) Has the same meaning as defined in subdivision (g) of the Military and Veterans Code and must meet the "Control" and "Operate" criteria. An enterprise which is 51 percent owned, or the stock is 51 percent owned, by one or more disabled veterans.

EXHIBIT 2

POLICY REGARDING UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS

The following policy of the United States shall be adhered to in the performance of this Contract :

- a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal Agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.
- b) Consultant hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. Consultant further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of Consultant's compliance with this clause.
- c) As used in this Contract, the term "small business concern" shall mean a small business as defined in Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern (1) which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirement of 13 CFR Part 124. Consultant shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act. Consultant shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

Consultant acting in good faith may rely on written representations by its subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.²

² Notwithstanding this provision of the federal statute, all WMDVBE subcontractors must be verified pursuant to the procedures prescribed in Section 2 of CPUC General Order 156, as such procedures may be amended periodically.

Non-Disclosure and Use of Information Agreement

**PACIFIC GAS AND ELECTRIC COMPANY
NONDISCLOSURE AND USE OF INFORMATION AGREEMENT**

THIS AGREEMENT is by and between _____ (hereinafter referred to as "Company").
_____ (hereinafter referred to as "Undersigned") authorized
employee of Company (together, the "Receiving Party"), and PACIFIC GAS AND ELECTRIC COMPANY (hereinafter referred to as
"PG&E") on the date set forth below.

Undersigned and Company agree as follows:

1. The Receiving Party acknowledges that in the course of performing Work under San Francisco Energy Watch, a partnership program between PG&E and the City and County of San Francisco (SFEW), the Receiving Party will be given access to items PG&E considers to be trade secrets, such as confidential commercial or personal information concerning, but not limited to, technological, ratemaking, legislative, and personnel matters and practices of PG&E, its parent company, subsidiaries, and affiliates, and of PG&E's customers or other members of the public, and/or confidential information about specific PG&E customers, such as account numbers and information about a particular customer's monthly or annual energy usage, the disclosure of which could constitute a violation of applicable CPUC rules, PG&E's tariffs, and/or the customer's right of privacy under California law (together referred to as "confidential information").
2. In consideration of being made privy to such confidential information to the extent permitted by law, the Receiving Party hereby agrees to hold the same in strict confidence, and not to disclose it, or otherwise make it available, to any person or third party, including any affiliate of PG&E that produces energy or energy-related products or services, without the prior written consent of PG&E. If disclosure is required by law, Receiving Party shall provide PG&E at least 48 hours' notice of the request, including the name and business affiliation of the requesting party, prior to any disclosure. The Receiving Party agrees that all such confidential information:
 - (a) shall be used only for the purpose of providing Work under SFEW; and
 - (b) shall not be reproduced, copied, in whole or in part, except when necessary for the purposes set forth in (a) above; and
 - (c) shall, together with any copies, reproductions or other materials developed by Undersigned from which confidential information may be segregated or extracted, be returned to PG&E when no longer required for the Undersigned's obligations (including audit recordkeeping obligations) under SFEW. The Receiving Party agrees to abide by all written or oral directives given to Receiving Party concerning PG&E policies and standards governing access to and use of computer resources and specifically to:
 - (a) to use only the user ID, password and Access Card assigned by Information Protection Services for his or her personal use, and
 - (b) to maintain the confidentiality of these authentication keys and protect them from use by others.
4. The Receiving Party hereby agrees that any third parties owning any confidential information are express third party beneficiaries of this Agreement.
5. The Receiving Party hereby agrees that for any violation of any provisions of the Agreement, a restraining order and/or injunction may be issued against the Receiving Party in addition to any other remedy PG&E may have at law.
6. This Agreement shall be governed by and interpreted in accordance with the laws of The State of California.

UNDERSIGNED:

COMPANY

Signature

Name

Title

Company

Date

Company Name

Signature of Authorized Agent of

Name

Title

Date

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

First Amendment

THIS AMENDMENT (this "Amendment") is made as of May 19, 2010, in San Francisco, California, by and between **ICF Resources, L.L.C.**, ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

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

WHEREAS, this Agreement was approved by the Board of Supervisors (Resolution 173-10) April 27, 2010 and signed by the Mayor on May 6, 2010; and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to clarify certain contract provisions;

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

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

a. **Agreement.** The term "Agreement" shall mean the Agreement dated March 19, 2010 between Contractor and City,

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

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

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

1. Compensation. Compensation shall be made in monthly payments within 30 days after approval by the City of work, as set forth in Section 4 of this Agreement, that the Director of the **Department of the Environment**, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed as of the last day of the preceding month. In no event shall the amount of this Agreement exceed **Nineteen Million Dollars (\$19,000,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the **Department of the Environment** as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

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

5. **Compensation.** Compensation shall be made in monthly payments within 30 days after approval by the City of work, as set forth in Section 4 of this Agreement, that the Director of the **Department of the Environment**, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed as of the last day of the preceding month. In no event shall the amount of this Agreement exceed **Nineteen Million Dollars (\$19,000,000), which consists of \$6,500,000 in compensation payable to the Contractor and \$12,500,000 in cash rebates to pay for qualifying energy-saving upgrades to commercial and residential property in San Francisco.** The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the **Department of the Environment** as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

b. Appendix B, dated March 19, 2010 is hereby deleted in its entirety and replaced with the attached Appendix B-1, dated May 19, 2010.

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

4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

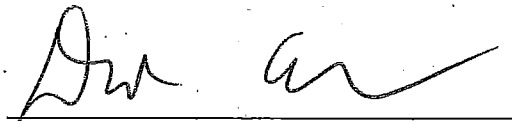
IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY


CONTRACTOR

Recommended by:

ICF Resources, L.L.C.



David Assmann, Acting Director
Department of the Environment

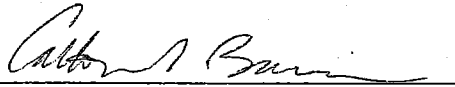


F. Michael Gray
Vice President

Approved as to Form:

Dennis J. Herrera
City Attorney

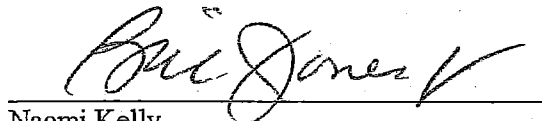
ICF Resources, L.L.C.
620 Folsom Street, #200
San Francisco, Ca 94107

By: 

Catharine S Barnes,
Deputy City Attorney

City vendor number: 57811

Approved:



Naomi Kelly
Director of the Office of Contract Administration,
and Purchaser

10/24/2020

CALCULATION OF CHARGES

ICF Resources, L.L.C.

During the term of this contract, City shall pay Contractor on a time and material basis for labor and indirect costs; and, when working on an incentive-payment program, in accordance with the terms described in Section 2 below. Tasks will be assigned using Work Orders, which will describe tasks and indicate a not-to-exceed dollar amount for completion of tasks.

1. Time and Materials Payments

Time: The City shall make payment for Contractor's labor following receipt of an invoice indicating project and tasks, and listing personnel, hourly rate, and number of hours worked. Billing rates reflect labor plus indirect costs.

TABLE B-1: FEE SCHEDULE

Position/Job Class	\$/Hour
Officer-in-Charge	\$275
Senior Architect	\$235
Engineering Manager	\$230
Manager	\$200
Principal Engineer	\$200
Program Manager	\$180
Project/Construction Manager	\$180
Senior Graphic Designer	\$175
Project Manager	\$150
Green Building Consultant	\$150
Architect	\$160
Senior Engineer	\$160
Senior Construction Manager	\$160
Associate Engineer	\$140
Database Specialist	\$150
Data Analyst	\$100
Auditor	\$130
Junior Auditor	\$ 80
Junior Program Staff	\$120
Marketer	\$100
Junior Graphic Designer	\$100
Research/Writer	\$100
Administrative	\$100
Bilingual Translation	\$100
Community Outreach	\$ 80
Clerk	\$ 80

This contract extends until July 1, 2014. Billing rates in Table B-1 shall apply as of the effective date of this Agreement and extend through March 31, 2011. Beginning April 1, 2011, and for each subsequent twelve-month period through the term of the contract, billing rates may be increased by the amount of increase in the US Bureau of Labor Statistics, Consumer Price Index , PCU5416, Management and Technical Consulting Services. The base month is December, 2009. The increase shall be based on the increase of December, 2010 over December 2009 for the first calculation. Each following year's calculation will be based on a December to December comparison. If December figures are not available, calculation will be based on the latest available 12 month comparison period.

The new billing rate shall not exceed a 3% increase over the prior year's billing rate.

Contractor must submit a request for an increase in billing rates at least 60 days prior to each April 1 start date in order to receive increased rates for the full twelve month period. The request must include documentation from the US Bureau of Labor Statistics website.

Materials/OtherDirect Costs: Contactor must provide receipts and/or other documentation of proof of expenditures for charges for materials purchased in performance of project tasks and for other direct costs. Direct charges shall be invoiced at cost.

Subcontractor Costs: Contractor's invoice must include all Subcontractor charges including subcontractor(s)' invoice(s) for time as defined above, and receipts and/or other documentation of proof of expenditures for materials and other direct costs. Contractor's invoice may include an additional administrative fee of 5% on Subcontractor costs, listed clearly as a separate charge.

2. Incentive Payments

City shall pay Contractor for the incentive portion of installation of energy savings measures based on actual costs of energy efficiency equipment and/or installation costs of eligible projects. Under no circumstances can incentive funds be used to cover administrative or other indirect costs. During the term of this agreement, City will pay incentives for projects governed by one or more funding sources, each with its own set of requirements. Contractor shall follow guidelines issued with Work Orders regarding eligibility, incentive levels, reporting requirements, and any other directives governing payment from specified funds.

Incentive Account: City shall pay Contractor incentive payments due under this Agreement in advance ("Incentive Advance") as follows:

(i) Wherever City determines, in its discretion, that Contractor will be assigned tasks that include payment of incentives, City may pay Contractor up to \$400,000 to be used solely for payment by Contractor of incentives to its installation subcontractors, vendors, businesses or residents that become due and owing under the Agreement.

(ii) Contractor shall make incentive payments from the Incentive Advance to its installation subcontractors, vendors, businesses or residents as such payments become due and owing. Contractor will then invoice the City for such incentive payments made from the Incentive Advance.

(iii) Upon approval of such invoices, City shall restore to Contractor the invoiced amount, up to the original Incentive Advance balance, or such lesser amount as may remain in the program budget. When Contractor receives payment from the City for the incentive payments Contractor made from the Incentive Advance, Contractor shall promptly (and within no more than five business days) restore such amount to the Incentive Advance account to be utilized as provided in subsection (ii) above. At completion of the program (or depletion of the incentive payment budget), the Incentive Advance will have a zero balance.

(iii) Contractor shall, at all times, maintain the Incentive Advance funds separate and apart from all of its other accounts. Contractor may not use or apply any portion of the Incentive Advance for any purpose other than payment of incentive payments due and owing to installation contractors, vendors, or PG&E customers.

(iv) Monies received as Incentive Advance are subject to all provisions of the Agreement, including but not limited to, Section 11, "Payment does not Imply Acceptance of Work," Section 7, "Payment; Invoice Format," and Section 28, "Audit and Inspection of Records."

3. Payment Schedule

City shall pay Contractor within 30 days of City approval of an invoice. Payments are contingent on the satisfactory completion of all time and material tasks and/or installation projects.

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

Second Amendment

THIS AMENDMENT (this "Amendment") is made as of August 4, 2010 in San Francisco, California, by and between **ICF Resources, L.L.C.**, ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and
WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to modify the amount available for incentive payments;

WHEREAS, the portion of the Work under this Agreement funded through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5 has been increased to provide for additional incentive payments as defined in the contract; and

WHEREAS, Contractor represents that it has coverage under a Fidelity Bond naming the City as payee or obligee in a form acceptable to the City's Risk Manager and in an amount that City reasonably determines would cover the risk of loss, misuse or misappropriation of such advances.

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

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

a. Agreement. The term "Agreement" shall mean the Agreement dated March 19, 2010 between Contractor and City, as amended by the:

First amendment, dated May 19, 2010.

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

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

a. Appendix B-1, dated May 19, 2010 is hereby deleted in its entirety and replaced with the attached Appendix B-2, dated August 4, 2010.

2b. Submitting False Claims; Monetary Penalties. Section 8 is hereby replaced in its entirety to read as follows:

8. Submitting False Claims; Monetary Penalties.

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

2c Requiring Minimum Compensation for Covered Employees. Section 43 is hereby replaced in its entirety to read as follows:

43. Requiring Minimum Compensation for Covered Employees

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

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

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

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

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

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

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

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

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

2d. Requiring Health Benefits for Covered Employees. Section 44 is hereby replaced in its entirety to read as follows:

44. Requiring Health Benefits for Covered Employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

CONTRACTOR

Recommended by:

ICF Resources, L.L.C.

Debbie Raphael *for David Assman*
David Assman, Acting Director
Department of the Environment

for *F. Chambers*
F. Michael Gray
Vice President

Approved as to Form:

Dennis J. Herrera
City Attorney

ICF Resources, L.L.C.
620 Folsom Street, #200
San Francisco, Ca 94107

By: *Catharine S Barnes*
Catharine S Barnes
Deputy City Attorney

City vendor number: 57811

Approved:

Naomi Kelly
Naomi Kelly
Director of the Office of Contract Administration,
and Purchaser

CALCULATION OF CHARGES

ICF Resources, L.L.C.

During the term of this contract, City shall pay Contractor on a time and material basis for labor and indirect costs; and, when working on an incentive-payment program, in accordance with the terms described in Section 2 below. Tasks will be assigned using Work Orders, which will describe tasks and indicate a not-to-exceed dollar amount for completion of tasks.

1. Time and Materials Payments

Time: The City shall make payment for Contractor's labor following receipt of an invoice indicating project and tasks, and listing personnel, hourly rate, and number of hours worked. Billing rates reflect labor plus indirect costs.

TABLE B-1: FEE SCHEDULE

Position/Job Class	\$/Hour
Officer-in-Charge *	\$275
Senior Architect	\$235
Engineering Manager	\$230
Manager	\$200
Principal Engineer	\$200
Program Manager	\$180
Project/Construction Manager	\$180
Senior Graphic Designer	\$175
Project Manager	\$150
Green Building Consultant	\$150
Architect	\$160
Senior Engineer	\$160
Senior Construction Manager	\$160
Associate Engineer	\$140
Database Specialist	\$150
Data Analyst	\$100
Auditor	\$130
Junior Auditor	\$ 80
Junior Program Staff	\$120
Marketer	\$100
Junior Graphic Designer	\$100
Research/Writer	\$100
Administrative	\$100
Bilingual Translation	\$100
Community Outreach	\$ 80
Clerk	\$ 80

This contract extends until July 1, 2014. Billing rates in Table B-1 shall apply as of the effective date of this Agreement and extend through March 31, 2011. Beginning April 1, 2011, and for each subsequent twelve-month period through the term of the contract, billing rates may be increased by the amount of increase in the US Bureau of Labor Statistics, Consumer Price Index, PCU5416, Management and Technical Consulting Services. The base month is December, 2009. The increase shall be based on the increase of December, 2010 over December 2009 for the first calculation. Each following year's calculation will be based on a December to December comparison. If December figures are not available, calculation will be based on the latest available 12 month comparison period.

The new billing rate shall not exceed a 3% increase over the prior year's billing rate.

Contractor must submit a request for an increase in billing rates at least 60 days prior to each April 1 start date in order to receive increased rates for the full twelve month period. The request must include documentation from the US Bureau of Labor Statistics website.

Materials/Other Direct Costs: Contractor must provide receipts and/or other documentation of proof of expenditures for charges for materials purchased in performance of project tasks and for other direct costs. Direct charges shall be invoiced at cost.

Subcontractor Costs: Contractor's invoice must include all Subcontractor charges including subcontractor(s)' invoice(s) for time as defined above, and receipts and/or other documentation of proof of expenditures for materials and other direct costs. Contractor's invoice may include an additional administrative fee of 5% on Subcontractor costs, listed clearly as a separate charge.

2. Incentive Payments

City shall pay Contractor for the incentive portion of installation of energy savings measures based on actual costs of energy efficiency equipment and/or installation costs of eligible projects. Under no circumstances can incentive funds be used to cover administrative or other indirect costs. During the term of this agreement, City will pay incentives for projects governed by one or more funding sources, each with its own set of requirements. Contractor shall follow guidelines issued with Work Orders regarding eligibility, incentive levels, reporting requirements, and any other directives governing payment from specified funds.

Incentive Account: City shall pay Contractor incentive payments due under this Agreement in advance ("Incentive Advance") as follows:

(i) Wherever City determines, in its discretion, that Contractor will be assigned tasks that include payment of incentives, City may pay Contractor up to \$825,000 to be used solely for payment by Contractor of incentives to its installation subcontractors, vendors, businesses or residents that become due and owing under the Agreement.

(ii) Contractor shall make incentive payments from the Incentive Advance to its installation subcontractors, vendors, businesses or residents as such payments become due and owing. Contractor will then invoice the City for such incentive payments made from the Incentive Advance.

(iii) Upon approval of such invoices, City shall restore to Contractor the invoiced amount, up to the original Incentive Advance balance, or such lesser amount as may remain in the program budget. When Contractor receives payment from the City for the incentive payments Contractor made from the Incentive Advance, Contractor shall promptly (and within no more than five business days) restore such amount to the Incentive Advance account to be utilized as provided in subsection (ii) above. At completion of the program (or depletion of the incentive payment budget), the Incentive Advance will have a zero balance.

(iii) Contractor shall, at all times, maintain the Incentive Advance funds separate and apart from all of its other accounts. Contractor may not use or apply any portion of the Incentive Advance for any purpose other than payment of incentive payments due and owing to installation contractors, vendors, or PG&E customers.

(iv) Monies received as Incentive Advance are subject to all provisions of the Agreement, including but not limited to, Section 11, "Payment does not imply Acceptance of Work," Section 7, "Payment; Invoice Format," and Section 28, "Audit and Inspection of Records."

3. Payment Schedule

City shall pay Contractor within 30 days of City approval of an invoice. Payments are contingent on the satisfactory completion of all time and material tasks and/or installation projects.

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

Third Amendment

THIS AMENDMENT (this "Amendment") is made as of September 1, 2010 in San Francisco, California, by and between **ICF Resources, L.L.C.**, ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and
WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to modify the amount available for incentive payments;

WHEREAS, the portion of the Work under this Agreement funded through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5 has been increased to provide for additional incentive payments authorized under the Agreement; and

WHEREAS, Contractor will provide a Fidelity Bond to cover the risk of loss, misuse or misappropriation of incentive advances authorized under the Agreement up to \$1,100,000.

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

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

a. **Agreement.** The term "Agreement" shall mean the Agreement dated March 19, 2010 between Contractor and City, as amended by the:

First Amendment, dated May 19, 2010,
Second Amendment, dated August 4, 2010.

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

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

a. Appendix B-2, dated August 4, 2010 is hereby deleted in its entirety and replaced with the attached Appendix B-3, dated September 1, 2010.

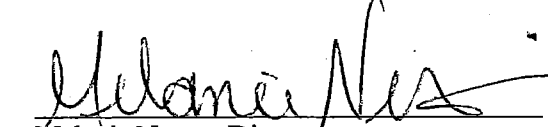
3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

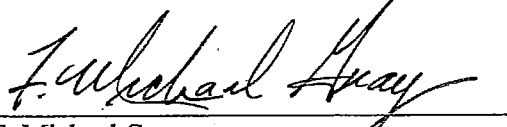
CITY

Recommended by:


Melanie Nutter, Director
Department of the Environment

CONTRACTOR

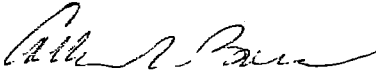
ICF Resources, L.L.C.


F. Michael Gray
Vice President

Approved as to Form:

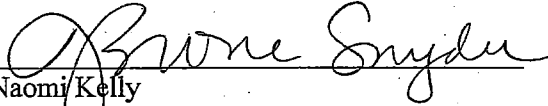
Dennis J. Herrera
City Attorney

ICF Resources, L.L.C.
620 Folsom Street, #200
San Francisco, Ca 94107

By: 
Catharine S Barnes
Deputy City Attorney

City vendor number: 57811

Approved:


Naomi Kelly
Director of the Office of Contract Administration,
and Purchaser

CALCULATION OF CHARGES

ICF Resources, L.L.C.

During the term of this contract, City shall pay Contractor on a time and material basis for labor and indirect costs; and, when working on an incentive-payment program, in accordance with the terms described in Section 2 below. Tasks will be assigned using Work Orders, which will describe tasks and indicate a not-to-exceed dollar amount for completion of tasks.

1. Time and Materials Payments

Time: The City shall make payment for Contractor's labor following receipt of an invoice indicating project and tasks, and listing personnel, hourly rate, and number of hours worked. Billing rates reflect labor plus indirect costs.

TABLE B-1: FEE SCHEDULE

Position/Job Class	\$/Hour
Officer-in-Charge	\$275
Senior Architect	\$235
Engineering Manager	\$230
Manager	\$200
Principal Engineer	\$200
Program Manager	\$180
Project/Construction Manager	\$180
Senior Graphic Designer	\$175
Project Manager	\$150
Green Building Consultant	\$150
Architect	\$160
Senior Engineer	\$160
Senior Construction Manager	\$160
Associate Engineer	\$140
Database Specialist	\$150
Data Analyst	\$100
Auditor	\$130
Junior Auditor	\$ 80
Junior Program Staff	\$120
Marketer	\$100
Junior Graphic Designer	\$100
Research/Writer	\$100
Administrative	\$100
Bilingual Translation	\$100
Community Outreach	\$ 80
Clerk	\$ 80

This contract extends until July 1, 2014. Billing rates in Table B-1 shall apply as of the effective date of this Agreement and extend through March 31, 2011. Beginning April 1, 2011, and for each subsequent twelve-month period through the term of the contract, billing rates may be increased by the amount of increase in the US Bureau of Labor Statistics, Consumer Price Index, PCU5416, Management and Technical Consulting Services. The base month is December, 2009. The increase shall be based on the increase of December, 2010 over December 2009 for the first calculation. Each following year's calculation will be based on a December to December comparison. If December figures are not available, calculation will be based on the latest available 12 month comparison period.

The new billing rate shall not exceed a 3% increase over the prior year's billing rate.

Contractor must submit a request for an increase in billing rates at least 60 days prior to each April 1 start date in order to receive increased rates for the full twelve month period. The request must include documentation from the US Bureau of Labor Statistics website.

Materials/Other Direct Costs: Contractor must provide receipts and/or other documentation of proof of expenditures for charges for materials purchased in performance of project tasks and for other direct costs. Direct charges shall be invoiced at cost.

Subcontractor Costs: Contractor's invoice must include all Subcontractor charges including subcontractor(s) invoice(s) for time as defined above, and receipts and/or other documentation of proof of expenditures for materials and other direct costs. Contractor's invoice may include an additional administrative fee of 5% on Subcontractor costs, listed clearly as a separate charge.

2. Incentive Payments

City shall pay Contractor for the incentive portion of installation of energy savings measures based on actual costs of energy efficiency equipment and/or installation costs of eligible projects. Under no circumstances can incentive funds be used to cover administrative or other indirect costs. During the term of this agreement, City will pay incentives for projects governed by one or more funding sources, each with its own set of requirements. Contractor shall follow guidelines issued with Work Orders regarding eligibility, incentive levels, reporting requirements, and any other directives governing payment from specified funds.

Incentive Account: City shall pay Contractor incentive payments due under this Agreement in advance ("Incentive Advance") as follows:

(i) Wherever City determines, in its discretion, that Contractor will be assigned tasks that include payment of incentives, City may pay Contractor up to **\$1,100,000** to be used solely for payment by Contractor of incentives to its installation subcontractors, vendors, businesses or residents that become due and owing under the Agreement.

(ii) Contractor shall make incentive payments from the Incentive Advance to its installation subcontractors, vendors, businesses or residents as such payments become due and owing. Contractor will then invoice the City for such incentive payments made from the Incentive Advance.

(iii) Upon approval of such invoices, City shall restore to Contractor the invoiced amount, up to the original Incentive Advance balance, or such lesser amount as may remain in the program budget. When Contractor receives payment from the City for the incentive payments Contractor made from the Incentive Advance, Contractor shall promptly (and within no more than five business days) restore such amount to the Incentive Advance account to be utilized as provided in subsection (ii) above. At completion of the program (or depletion of the incentive payment budget), the Incentive Advance will have a zero balance.

(iii) Contractor shall, at all times, maintain the Incentive Advance funds separate and apart from all of its other accounts. Contractor may not use or apply any portion of the Incentive Advance for any purpose other than payment of incentive payments due and owing to installation contractors, vendors, or PG&E customers.

(iv) Monies received as Incentive Advance are subject to all provisions of the Agreement, including but not limited to, Section 11, "Payment does not Imply Acceptance of Work," Section 7, "Payment; Invoice Format," and Section 28, "Audit and Inspection of Records."

3. Payment Schedule

City shall pay Contractor within 30 days of City approval of an invoice. Payments are contingent on the satisfactory completion of all time and material tasks and/or installation projects.

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

Fourth Amendment

THIS AMENDMENT (this "Amendment") is made as of October 15, 2012, in San Francisco, California, by and between ICF Resources, L.L.C., ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

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

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period, and increase the contract amount.

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

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

a. Agreement. The term "Agreement" shall mean the Agreement dated March 19, 2010 between Contractor and City, as amended by the:

First amendment, dated May 19, 2010, and
Second amendment, dated August 4, 2010, and
Third Amendment, dated September 1, 2010.

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

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

a. Section 5. Section 5. Compensation of the Agreement currently reads as follows:

5. Compensation. Compensation shall be made in monthly payments within 30 days after approval by the City of work, as set forth in Section 4 of this Agreement, that the Director of the **Department of the Environment**, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed as of the last day of the preceding month. In no event shall the amount of this Agreement exceed **Nineteen Million Dollars (\$19,000,000), which consists of \$6,500,000 in compensation payable to the Contractor and \$12,500,000 in cash rebates to pay for qualifying energy-saving upgrades to commercial and residential property in San Francisco.** The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the **Department of the Environment** as being in accordance with this Agreement. City may withhold

payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

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

5. **Compensation.** Compensation shall be made in monthly payments within 30 days after approval by the City of work, as set forth in Section 4 of this Agreement, that the Director of the **Department of the Environment**, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed as of the last day of the preceding month. In no event shall the amount of this Agreement exceed **THIRTY ONE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$31,400,000)**, which amount includes funds to be used by Contractor for 'incentive payments', as provided in **Appendix B-4**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the **Department of the Environment** as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

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

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from March 19, 2010 to July, 1, 2014.

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

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from March 19, 2010 to December 31, 2016.

c. **Appendix B-3**, dated September 1, 2010 is hereby deleted in its entirety and replaced with the attached Appendix B-4, dated October 15, 2012.

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

4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

CONTRACTOR

Recommended by:

ICF Resources, L.L.C.

Melanie Nutter, Director
Department of the Environment

Robert F. Toth
Senior Vice President, Contracts &
Administration

Approved as to Form:

ICF Resources, L.L.C.
620 Folsom Street, #200
San Francisco, Ca 94107

Dennis J. Herrera
City Attorney

City vendor number: 57811

By:

Thomas J. Owen
Deputy City Attorney

Approved:

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

CALCULATION OF CHARGES

ICF Resources, L.L.C.

During the term of this contract, City shall pay Contractor on a time and material basis for labor and indirect costs; and, when working on an incentive-payment program, in accordance with the terms described in Section 2 below. Tasks will be assigned using Work Orders, which will describe tasks and indicate a not-to-exceed dollar amount for completion of tasks.

1. Time and Materials Payments

Time: The City shall make payment for Contractor's labor following receipt of an invoice indicating project and tasks, and listing personnel, hourly rate, and number of hours worked. Billing rates reflect labor plus indirect costs.

TABLE B-1: FEE SCHEDULE

Position/Job Class	\$/Hour
Officer-in-Charge	\$280
Senior Architect	\$240
Engineering Manager	\$235
Manager	\$205
Principal Engineer	\$205
Program Manager	\$185
Project/Construction Manager	\$185
Senior Graphic Designer	\$180
Project Manager	\$155
Green Building Consultant	\$155
Architect	\$165
Senior Engineer	\$165
Senior Construction Manager	\$165
Associate Engineer	\$140
Database Specialist	\$150
Data Analyst	\$100
Auditor	\$130
Junior Auditor	\$ 80
Junior Program Staff	\$120
Marketer	\$100
Junior Graphic Designer	\$100
Research/Writer	\$100
Administrative	\$100
Bilingual Translation	\$100
Community Outreach	\$ 80
Clerk	\$ 80

This contract extends until December 31, 2016. Billing rates in Table B-1 shall apply as of the effective date of this Agreement and extend through March 31, 2013. Beginning April 1, 2013, and for each subsequent twelve-month period through the term of the contract, billing rates may be increased by the amount of increase in the US Bureau of Labor Statistics, Consumer Price Index, PCU5416, Management and Technical Consulting Services. The base month is December, 2009. The increase shall be based on the increase of December, 2010 over December 2009 for the first calculation. Each following year's calculation will be based on a December to December comparison. If December figures are not available, calculation will be based on the latest available 12 month comparison period.

The new billing rate shall not exceed a 3% increase over the prior year's billing rate.

Contractor must submit a request for an increase in billing rates at least 60 days prior to each April 1 start date in order to receive increased rates for the full twelve month period. The request must include documentation from the US Bureau of Labor Statistics website.

Materials/Other Direct Costs: Contactor must provide receipts and/or other documentation of proof of expenditures for charges for materials purchased in performance of project tasks and for other direct costs. Direct charges shall be invoiced at cost.

Subcontractor Costs: Contractor's invoice must include all Subcontractor charges including subcontractor(s)' invoice(s) for time as defined above, and receipts and/or other documentation of proof of expenditures for materials and other direct costs. Contractor's invoice may include an additional administrative fee of 5% on Subcontractor costs, listed clearly as a separate charge.

2. Incentive Payments

City shall pay Contractor for the incentive portion of installation of energy savings measures based on actual costs of energy efficiency equipment and/or installation costs of eligible projects. Under no circumstances can incentive funds be used to cover administrative or other indirect costs. During the term of this agreement, City will pay incentives for projects governed by one or more funding sources, each with its own set of requirements. Contractor shall follow guidelines issued with Work Orders regarding eligibility, incentive levels, reporting requirements, and any other directives governing payment from specified funds.

Incentive Account: City shall pay Contractor incentive payments due under this Agreement in advance ("Incentive Advance") as follows:

(i) Wherever City determines, in its discretion, that Contractor will be assigned tasks that include payment of incentives, City may pay Contractor up to **\$1,100,000** to be used solely for payment by Contractor of incentives to its installation subcontractors, vendors, businesses or residents that become due and owing under the Agreement.

(ii) Contractor shall make incentive payments from the Incentive Advance to its installation subcontractors, vendors, businesses or residents as such payments become due and owing. Contractor will then invoice the City for such incentive payments made from the Incentive Advance.

(iii) Upon approval of such invoices, City shall restore to Contractor the invoiced amount, up to the original Incentive Advance balance, or such lesser amount as may remain in the program budget. When Contractor receives payment from the City for the incentive payments Contractor made from the Incentive Advance, Contractor shall promptly (and within no more than five business days) restore such amount to the Incentive Advance account to be utilized as provided in subsection (ii) above. At completion of the program (or depletion of the incentive payment budget), the Incentive Advance will have a zero balance.

(iii) Contractor shall, at all times, maintain the Incentive Advance funds separate and apart from all of its other accounts. Contractor may not use or apply any portion of the Incentive Advance for any purpose other than payment of incentive payments due and owing to installation contractors, vendors, or PG&E customers.

(iv) Monies received as Incentive Advance are subject to all provisions of the Agreement, including but not limited to, Section 11, "Payment does not Imply Acceptance of Work," Section 7, "Payment; Invoice Format," and Section 28, "Audit and Inspection of Records."

3. Payment Schedule

City shall pay Contractor within 30 days of City approval of an invoice. Payments are contingent on the satisfactory completion of all time and material tasks and/or installation projects.

1 [Professional Services Agreement for Energy Efficiency, Renewable Energy and Climate
2 Change with ICF International].

3 **Resolution approving a Professional Services Agreement with ICF International for**
4 **Energy Efficiency, Renewable Energy, and Climate Professional Services at a total cost**
5 **of \$19,000,000.**
6

7 WHEREAS, Charter Section 9.118 requires the Board of Supervisors to approve
8 contracts requiring expenditures by the City of ten million dollars or more; and

9 WHEREAS, the Department of the Environment seeks authorization for a five year
10 contract with ICF International with an estimated not-to-exceed total cost to the City of \$19
11 million for services required for City programs that address Energy Efficiency, Renewable
12 Energy, and Climate Change; and

13 WHEREAS, a copy of the proposed contract is on file with the Clerk of the Board of
14 Supervisors in File No. 100389, and is hereby declared to be a part of this Resolution as if set
15 forth fully herein ("ICF Agreement"); and

16 WHEREAS, the ICF Agreement will be funded in part from sources previously
17 approved by the Board of Supervisors, including but not limited to, a \$11,540,000 revenue
18 contract from the California Public Utilities Commission, through the Pacific Gas and Electric
19 Company (Resolution 0033-10); a minimum of \$3,800,000 from a \$7,739,300 block grant
20 from the U.S. Department of Energy through the American Recovery and Reinvestment Act
21 (ARRA) of 2009 (Ord. 0002-10); a \$250,000 grant from the Sidney E. Frank Foundation (Ord.
22 0014-10); a \$175,000 grant from Living Cities (Ord. 0013-10); and an \$875,957 ARRA grant
23 from the California Energy Commission State Energy Program through the Association of Bay
24 Area Governments (Resolution 0060-10); and
25

1 WHEREAS, the Department of the Environment selected ICF International as the
2 highest ranked proposer responding to a Request for Proposals issued June 30, 2009; and

3 WHEREAS, the \$19 Million estimated value of the ICF Agreement consists of
4 approximately \$6,500,000 in compensation payable to ICF International for its services and
5 \$12,500,000 in cash rebates that "pass-through" the contract and will be paid out by ICF as
6 designated by the City's programs to private property owners for qualifying energy-saving
7 services and upgrades to properties located within the City; now, therefore, be it

8 RESOLVED, That the Board of Supervisors, under Charter Section 9.118, hereby
9 approves the contract with ICF International for Energy Efficiency, Renewable Energy, and
10 Climate Professional Services for a term of five (5) years with total City expenditures,
11 including rebate funding, of \$19 million. The Board of Supervisors further authorizes the
12 Director of the Department of the Environment to execute an agreement in substantially the
13 form of the ICF Agreement on file with the Clerk of the Board of Supervisors.



City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 100389

Date Passed: April 27, 2010


Resolution approving a Professional Services Agreement with ICF International for Energy Efficiency, Renewable Energy, and Climate Professional Services at a total cost of \$19,000,000.

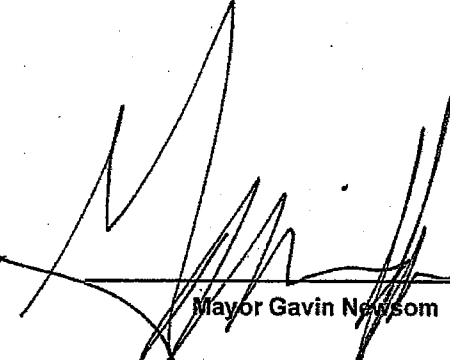
April 27, 2010 Board of Supervisors - ADOPTED

Ayes: 10 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar and Mirkarimi
Excused: 1 - Maxwell

File No. 100389

I hereby certify that the foregoing Resolution was ADOPTED on 4/27/2010 by the Board of Supervisors of the City and County of San Francisco.


Angela Calvillo
Clerk of the Board


Mayor Gavin Newsom

5/6/2010
Date Approved

**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
ICF Resources, L.L.C.**

This Agreement is made this 19th day of March, 2010 in the City and County of San Francisco, State of California, by and between **ICF Resources, L.L.C.**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the Department of the Environment ("Department") wishes to obtain Energy Efficiency, Renewable Energy, and Climate Professional Services; and,

WHEREAS, a Request for Proposal ("RFP") was issued on June 30, 2009 and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number **4012-09/10** on **July 20, 2009**; and

WHEREAS funding for portions of the Work under this Agreement will be provided through the San Francisco Energy Watch (SFEW) program with PG&E as approved by the California Public Utilities Commission in Decision D 09-09-047 dated September 24, 2009 and subsequent Rulings ordered under that Decision; and

WHEREAS funding for portions of the Work under this Agreement will be provided through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5 and the United States Department of Energy, including but not limited to an Energy Efficiency and Conservation Block Grant and a grant from the California Energy Commission State Energy Program through the Association of Bay Area Governments.

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are

not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

2. **Term of the Agreement.** Subject to Section 1, the term of this Agreement shall be from March 19, 2010 to July, 1, 2014.

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

4. **Services Contractor Agrees to Perform.** The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein. As part of this contract Work Orders will be prepared as follows: Work Orders will identify a detailed project scope, tasks, staffing plan, schedule, deliverables, budget (including incentive payment budget) and costs to complete the tasks, and specific requirements associated with the funding source(s) for the Work Order. Each Work Order shall identify the entire amount to which the Contractor shall be entitled to fully perform and deliver to the City all work identified in that Work Order.

5. **Compensation.** Compensation shall be made in monthly payments within 30 days after approval by the City of work, as set forth in Section 4 of this Agreement, that the Director of the **Department of the Environment**, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed as of the last day of the preceding month. In no event shall the amount of this Agreement exceed **Nineteen Million Dollars (\$19,000,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the **Department of the Environment** as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

6. **Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. **Payment; Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller. All amounts paid by City to Contractor shall be subject to audit by City. Records related to work under any task order funded in whole or in part by the federal government through ARRA shall be subject to audit by the United States Comptroller General, the appropriate Inspector General, or his or her representative(s). Records related to work under any task order funded in whole or in part through the San Francisco Energy Watch Program shall be subject to audit by duly authorized employees or agents of the California Public Utilities Commission and/or PG&E. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. **Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim. False claims or similar misconduct involving work under any Work Order funded in whole or in part by the federal government through ARRA is also subject to federal law, including the Federal False Claims Act, 31 U.S.C. §§ 3729-3733.

9. **Disallowance.** If Contractor claims or receives payment from City for a service, including for Work Orders funded in whole or part through the San Francisco Energy Watch Program or ARRA, and the reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor and its subcontractors shall comply with requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901. Contractor acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

10. **Taxes**

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

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

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

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

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

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

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

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

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

14. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the

manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

c. Nothing in this Agreement or any Work Order funded in whole or part through SFEW shall create any contractual relations between Contractor or its subcontractors and PG&E. All persons, if any, hired by Contractor shall be employees or subcontractors of Contractor and shall not be construed as employees or agents of PG&E in any respect

15. Insurance

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

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

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

3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage.

4) Professional liability insurance, if required, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

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

1) With respect to work performed under the SFEW, coverage shall: (A) by "Additional Insured" endorsement name as Additional Insureds both City and PG&E, and their officers, managers, directors, agents and employees, and PG&E's affiliates, subsidiaries, and parent company, with respect to liability arising out of or connected with the Work performed under this Agreement. In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language shall be listed under the Policy endorsement schedule: "City and PG&E, and their officers, managers, directors, agents and employees, and PG&E's affiliates, subsidiaries, and parent company with respect to liability arising out of or connected with the Work performed under this Agreement are additional insureds under a blanket endorsement." (B) With respect to tasks not reimbursable under SFEW, coverage shall name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) Coverage shall be endorsed to specify that Contractor's policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, and that any insurance or self-insurance maintained by City or PG&E shall not contribute with it.

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

d. All policies shall provide thirty (30) days' advance written notice to City (and with respect to work performed under SFEW, PG&E) of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices, signed by a person authorized by that insurer to bind coverage on its behalf, and copies of insurance documents shall be sent to City at the address specified in Section 25 "Notices to the Parties."

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

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

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

h. Before commencing any operations under this Agreement, Contractor shall do the following: (A) furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above, and (B) permit inspection of the original policies or furnish complete certified copies of the policies promptly at any time upon request of City. Failure to maintain insurance shall constitute a material breach of this Agreement.

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

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name PG&E, and its officers, managers, directors, agents and employees, and PG&E's affiliates, subsidiaries, and parent company, the City and County of San Francisco, its boards, commissions, officers and employees and the Contractor listed as additional insureds.

16. Indemnification.

a. **Mutual Indemnification.** Contractor (including its subcontractors) agrees to indemnify, hold harmless and defend both City, its Boards, Commissions, Officers and Employees and with respect to tasks associated with SFEW, PG&E, and their officers, managers, directors, agents and employees, and PG&E's affiliates, subsidiaries, and parent company from and against all claims, demands, losses, damages, costs, expenses and liability (legal, contractual, or otherwise), by whomever asserted which arise from or are in any way connected with any acts or omissions of Contractor (including its subcontractors) in carrying out the Work under the Agreement, except those arising by reason of the sole negligence or willful misconduct of City, its boards, commissions, officers and employees and/or (with respect to tasks associated with SFEW) of PG&E, its affiliates, subsidiaries, and parent company)

City agrees to indemnify, hold harmless and defend Contractor against all claims, demands, losses, damages, costs, expenses and liability (legal, contractual, or otherwise), by whomever asserted which arise from or are in any way connected with any acts or omissions of City in its obligations under this Agreement except those arising by reason of the sole negligence or willful misconduct of Contractor (including its subcontractors).

In the event of concurrent negligence of Contractor (including its subcontractors) and City, its officers, employees and/or agents, the liability for any and all claims for injuries or damages to persons and/or property arising from such concurrent negligence shall be apportioned under California law. Nothing in this Agreement shall constitute a waiver or limitation of any

rights that Contractor may have under applicable law in the event of concurrent negligence of persons or entities other than City.

b. **Infringement Protection.** Contractor represents to City that the material to be prepared under this Agreement will not infringe upon the copyright, patent or license, or otherwise violate the proprietary rights, including trade secret rights, of any person or entity. Royalties, license fees or other charges for patents, copyrights, licenses or other intellectual property for designs, processes, machinery, equipment, technology, published or unpublished data, information or materials, including but not limited to, manuals, computer programs or other deliverables furnished by Contractor for the Work, or for processes or methods employed by Contractor in performing the Work, shall be included in the Contract prices. Furthermore, except where City or PG&E have provided Contractor materials and such provided materials are alleged to have infringed, Contractor agrees to indemnify and hold City, its boards, commissions, officers and employees and PG&E (including their officers, managers, directors, agents and employees, and PG&E's affiliates, subsidiaries, and parent company) harmless from and against any and all liabilities, costs and damages arising out of any such infringement, and from any suit, demand or claim made against City or PG&E alleging any such infringement or violation. In addition to the foregoing, if there is any such suit, demand or claim, Contractor agrees at the option of City or PG&E (with respect to tasks associated with SFEW) and as soon as possible to either procure for City and PG&E the right to continue using the material, replace the material with non-infringing material, or modify it so it becomes non-infringing; provided, however that the replaced or modified material shall be equal to that contracted for hereunder and satisfactory to City and PG&E. Contractor further agrees to pay any judgment or reasonable settlement offer resulting from a suit, demand or claim, and pay any reasonable attorney's fees incurred by City and PG&E in defense against such suit.

17. Incidental and Consequential Damages.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND EXCEPT AS PROVIDED IN THIS SECTION 17, CONTRACTOR'S LIABILITY FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES OR FOR DAMAGES CAUSED BY CONTRACTOR'S NEGLIGENCE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED NINETEEN MILLION DOLLARS (\$19,000,000). CONTRACTOR'S LIABILITY LIMIT SET FORTH HEREIN SHALL NOT APPLY TO (1) CONTRACTOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 16 OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, CONTRACTOR'S OBLIGATION TO INDEMNIFY AND DEFEND CITY PURSUANT TO THE INFRINGEMENT INDEMNIFICATION OBLIGATIONS EXPRESSED THEREIN, (2) DAMAGES CAUSED BY CONTRACTOR'S GROSS NEGLIGENCE OR INTENTIONAL OR WILLFUL MISCONDUCT, (3) CLAIMS OR GENERAL DAMAGES THAT FALL WITHIN THE INSURANCE COVERAGE OF THIS AGREEMENT, (4) STATUTORY DAMAGES SPECIFIED IN THIS AGREEMENT, AND (5) WRONGFUL DEATH CAUSED BY CONTRACTOR.

18. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF

WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Left Blank by Agreement of the Parties (Liquidated Damages).

20. Default; Remedies

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

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

- | | |
|---|---|
| 8. Submitting False Claims; Monetary Penalties. | 37. Drug-free Workplace Policy |
| 10. Taxes | 53. Compliance with Laws |
| 15. Insurance | 57. Protection of Private Information of City |
| 24. Proprietary or Confidential Information of City | 58. Graffiti Removal |
| 30. Assignment | |

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

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

4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

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

expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

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

21. Termination for Convenience

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

b. Upon receipt of the notice 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 shall include, without limitation:

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

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

3) Terminating all existing orders and subcontracts.

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

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

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

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

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

1) The reasonable time and materials charges due Contractor under this Agreement (as set forth in Appendix B) for all services and other Work City directed Contractor to perform and customer incentives paid by the Contractor prior to the specified termination date, for which services or Work or customer incentives City has not already tendered payment. Contractor may also recover the reasonable cost of preparing the invoice.

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

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

4) A deduction for the account balance of incentive advances, if any, made by City to Contractor for customer incentives not due and owing prior to the specified termination date. A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

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

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

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

22. Rights and Duties upon Termination or Expiration

This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8.	Submitting False Claims; Monetary Penalties	24.	Proprietary or confidential information of City
9.	Disallowance	26.	Ownership of Results
10.	Taxes	26.	Works for Hire
11.	Payment Does Not Imply Acceptance of Work	28.	Audit and Inspection of Records
13.	Responsibility for Equipment	48.	Modification of Agreement.
14.	Independent Contractor; Payment of Taxes and Other Expenses	49.	Administrative Remedy for Agreement Interpretation.

- | | | | |
|-----|--------------------------------------|-----|--|
| 15. | Insurance | 50. | Agreement Made in California;
Venue |
| 16. | Indemnification | 51. | Construction |
| 17. | Incidental and Consequential Damages | 52. | Entire Agreement |
| 18. | Liability of City | 56. | Severability |
| | | 57. | Protection of Private Information |

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

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

24. Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City (including trade secrets and confidential information about specific PG&E Customers within the meaning of City's SFEW Agreement with PG&E) and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City and/or PG&E. Contractor agrees to hold all such information disclosed by City or PG&E to Contractor in confidence and to use, or require its subcontractors to use such information solely for the purpose of performing services and Work under this Agreement and in the manner specified in this Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data. Contractor shall require its employees and the employees of its subcontractors, who will perform Work or services funded by SFEW under this Agreement to sign a non-disclosure agreement in the form attached hereto as Appendix C, and shall deliver the signed original copies to City.

Contractor's duty to protect information described in the paragraph immediate above does not apply to information that: (a) was in the public domain at the time it was disclosed or falls within the public domain, except through a breach of this Agreement; or (b) is or becomes known by the Contractor or any of its associated companies from a source other than the City or PG&E without breach of this Agreement by the Contractor; or (c) is required by law, but only to the extent that such disclosure is so required by law, and only after the City has been notified in writing and has been provided a reasonable opportunity to take appropriate action to protect its legal interest in the Confidential Information.

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

To City:
Ann Kelly
Department of the Environment
City and County of San Francisco
11 Grove Street
San Francisco, CA 94102
ann.kelly@sfgov.org

To Contractor:
Rahul Young
ICF International
620 Folsom Street, Suite 200
San Francisco, CA 94107
ryoung@icfi.com

Any notice of default must be sent by registered mail.

26. Ownership of Results/Works for Hire. Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with Work funded exclusively under SFEW ("PGE Results") become, after approval and acceptance by City, the property of PG&E. Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with tasks under this Agreement that are not solely funded under SFEW, including, Work funded in whole or part by the U.S. Department of Energy under ARRA ("City Results") shall become the property of and will be transmitted to City. Neither Contractor nor its Subcontractors shall retain any property rights in PG&E Results or City Results. Contractor shall transmit PG&E Results and City Results to City for its inspection, approval and acceptance and shall fully cooperate and do all things reasonably necessary to allow PG&E and/or City and/or to claim sole ownership of the Results. However, Contractor may retain and use copies of PG&E Results and City Results for reference and as documentation of its experience and capabilities.

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, or, if funded in whole or part by the U.S. Department of Energy under ARRA, to the appropriate Federal agency as directed by City, and agrees to provide any material

and execute any documents necessary to effectuate such assignment. City shall, to the extent required by SFEW, assign all its right, title, and interest in the patents, copyrights and other intellectual property rights in such works to PG&E or the federal government, as appropriate. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

Contractor acknowledges that the US Department of Energy shall have a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, for federal Government purposes; (a) the copyright in City Results developed under this Agreement in whole or part by ARRA funding; and (2) any rights of copyright to which Contractor or its subcontractors acquire in whole or part by ARRA funding. Contractor and its subcontractors shall fully cooperate and do all things reasonably necessary to effectuate such license.

27. Left Blank by Agreement of the Parties.

28. Audit and Inspection of Records.

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

(b) Without limitation of subsection (a), in accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the United States Comptroller or his or her representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his or her representative to (1) examine any records that directly pertain to, and involve transactions relating to, this Agreement; and (2) interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA. Contractor shall include this subsection (b) in all of Contractor's agreements with its subcontractors from whom the Contractor acquires goods or services in its execution of the ARRA funded work.

29. Subcontracting. Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither Contractor nor City shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

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

31. Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions

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

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

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

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

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

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

33. Local Business Enterprise Utilization; Liquidated Damages

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

b. **PG&E Supplier Diversity Program.** To the extent consistent with federal, state and local laws applicable to this Agreement and with respect to tasks associated with SFEW, Contractor shall comply with PG&E's Supplier Diversity Purchasing Policy and Policy Regarding Utilization of Small Business Concerns and Small Disadvantaged Business concerns, attached as Exhibit 1 and 2 to this Agreement.

c. **U.S. Department of Energy Small, Disadvantaged and Women-Owned Business Participation Requirements.** Contractor shall comply with the requirements of 10 CFR § 600.236 (e) for Work funded in whole or part by the U.S. Department of Energy under ARRA.

34. **Nondiscrimination; Penalties**

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

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

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

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

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this

Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

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

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

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

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

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

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

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

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

43. Requiring Minimum Compensation for Covered Employees

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

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep

informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

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

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

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

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

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

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

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

44. Requiring Health Benefits for Covered Employees

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

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

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

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

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

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

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

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

- h. Contractor shall keep itself informed of the current requirements of the HCAO.
- i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.
- k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
- m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program.

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

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

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

2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry

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

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

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

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

6) Set the term of the requirements.

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

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

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

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

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

e. Liquidated Damages. Contractor agrees:

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

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

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

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

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

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

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

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

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

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

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

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

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

48. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a

cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

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

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

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

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

53. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such federal, state and local laws and regulations applicable to the Work to be performed under this Agreement, as they may be amended from time to time. Contractor shall obtain any required permits and licenses, serve notices, arrange for inspection and pay fees and deposits. Equipment and material furnished hereunder shall be so designed and fabricated that when installed it will comply with applicable laws, rules, and regulations. Expenses incurred in complying with these requirements shall be included in the Contract prices. Unless prohibited by law, Contractor shall hold City, its boards, commissions, officers and employees (and with respect to tasks associated with SFEW) PG&E, including its officers, managers, directors, agents and employees, and PG&E's affiliates, subsidiaries, and parent company, harmless from any liability, fine or penalty incurred as a result of Contractor's failure to comply with applicable legal and regulatory requirements, local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

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

55. Left Blank by Agreement of the Parties (Supervision of Minors)

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

57. Protection of Private Information.

a. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

b. Contractor shall utilize PG&E's approved data transfer protocols to transfer any confidential proprietary information obtained from or about PG&E and its customers, including but not limited to any information or data containing PG&E Customer account numbers.

58. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

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

59. Food Service Waste Reduction Requirements. Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the

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

60. Left Blank by Agreement of the Parties (Slavery Era Disclosure)

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

62. Force Majeure

The performance of the obligations of the Parties hereunder shall be suspended by the occurrence of any unforeseeable event beyond the control of the Parties, such as acts of God, war, mobilization, riot, sabotage, explosion, earthquakes, casualty, power failure, inability to obtain suitable and sufficient labor or material, or law or regulations restricting performance. In the event either Party claims that performance of its obligations was prevented or delayed by any such cause, that Party shall promptly notify the other Party of that fact, and of the circumstances preventing or delaying performance. Such Party so claiming a cause for delayed performance shall endeavor to take reasonable measures to remove the disability or obstacle to performance and resume operations at the earliest possible date.

63. No Endorsement

Contractor shall not indicate, and shall direct its Subcontractors not to indicate, in any form of written, verbal or electronic advertisement or in any other business or marketing development efforts, that its selection as Contractor under this Agreement constitutes an endorsement by PG&E of Contractor (or Subcontractor(s)). Contractor shall not represent, and shall prohibit its Subcontractors from representing, that PG&E's verification, inspection, and/or review of the design, construction, operation, or maintenance of Contractor (or Subcontractor(s)) Work under this Agreement constitutes a representation or a confirmation of the economic or technical feasibility, operational capability, or reliability of such measures.

64. Payment and Performance Bond. Wherever Contractor directly, or through a subcontractor, intends to spend over \$100,000 on materials or equipment, City may require Contractor to obtain a payment and performance bond at City's cost, from a surety acceptable to City, in the amount specified by City for up to 100 percent of the cost of materials or equipment ordered by Contractor or its subcontractor(s). Contractor shall obtain such bond within 15 days of City's request. City shall reimburse Contractor based on the surety company's invoice.

65. **Fidelity Bond for Incentive Advances.** Wherever Contractor receives advances under this Agreement or Work Orders issued hereunder for the payment of rebates or other incentives or for any other reason, City may require Contractor to obtain and maintain in force a fidelity bond naming the City as payee or obligee in a form acceptable to the City's Risk Manager and in an amount that City reasonably determines would cover the risk of loss, misuse or misappropriation of such advances.

66. **Time is of the Essence.** Contractor shall commit adequate resources to complete the Work within the project schedule specified in this Agreement and Work Orders issued hereunder.

67. **License of Pre-existing Material.** The term "Contractor Property" shall mean all pre-existing material, including, but not limited to, any products, software, materials and methodologies proprietary to Contractor and provided by Contractor or its suppliers and any trade secrets, know-how, methodologies and processes related to Contractor's products or services, all of which shall remain the sole and exclusive property of Contractor or its suppliers. Subject to the receipt of payment in full and to the terms of this Agreement, Contractor grants to the City a non-exclusive, non-transferable, perpetual license to use the Contractor Property contained in the Deliverables provided hereunder for purposes of this Agreement.

68. **Copyright Notice.** With respect to tasks associated with SFEW, Contractor shall place the following notice in the locations specified by PG&E on all marketing and promotional materials, all other materials for distribution to the general public and all other materials created in connection with services performed under this Agreement that the PG&E Project Manager designates:

(1) The copyright symbol or the word "Copyright" followed by the year in which the material is produced and the words "Pacific Gas and Electric Company;" and

(2) The text, "Funding for these materials is provided by California utility customers and administered by Pacific Gas and Electric Company, under the auspices of the California Public Utility Commission."

69. **Advertising** Contractor shall neither advertise nor allow advertising at the worksite(s) without written approval from City. With respect to tasks associated with SFEW that is not also funded in whole or part by ARRA, City may require Contractor to display a standard sign advertising the SFEW at all worksites. Signage at projects with Work funded in whole or part by ARRA shall conform to the requirements of applicable federal laws and regulations.

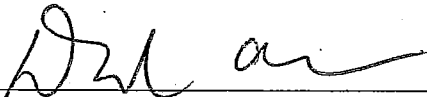
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

Recommended by:

ICF Resources, L.L.C




David Assmann
Acting Director
Department of the Environment

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

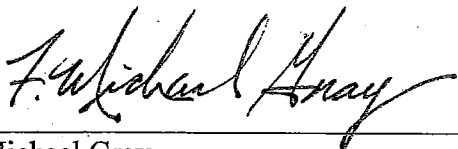
Approved as to Form:

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Dennis J. Herrera
City Attorney

By: 

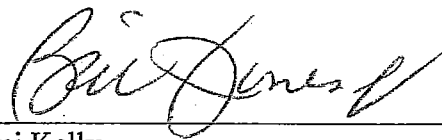
Catharine Barnes
Deputy City Attorney



F. Michael Gray
Vice President

Approved:

ICF Resources, L.L.C
620 Folsom Street, #200
San Francisco, CA 94107



Naomi Kelly
Director of the Office of Contract
Administration, and
Purchaser

City Vendor # 57811

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: PG&E Non-Disclosure Agreement
 - PG&E Exhibits
 - 1. Supplier Diversity Purchasing Policy
 - 2. Policy Regarding Utilization of Small Business Concerns and Small Disadvantaged Business Concerns

Appendix A

Services to be Provided by Contractor ICF Resources, LLC

I. DESCRIPTION OF SERVICES

The services described in the Scope of Work below are examples of the wide range of assistance that the San Francisco Department of the Environment anticipates will be needed during the term of the Agreement. As indicated in Request for Proposals for Energy Efficiency, Renewable Energy, and Climate Professional Services dated June 30, 2009, the Department's Climate and Energy program is divided into three target areas:

- **Energy Efficiency** – The Department has been implementing energy efficiency incentive programs for the private sector since 2002 and working on improved energy codes. San Francisco's 2002 Electricity Resource Plan set a 107 MW reduction goal by 2012. To date, target markets have been small and medium businesses and multifamily properties. Single family homes may be incorporated in the future.
- **Renewable Energy** – CCSF has set ambitious goals of achieving 50 MW of in-city renewable energy generation by 2012. San Francisco's Department of the Environment leads private sector renewable energy outreach efforts to help the city meet these goals. CCSF is aggressively pursuing a number of different renewable energy technologies, including wave and tidal power, solar photovoltaics, solar water heating, urban wind, geothermal heat pumps and combined heat and power.
- **Climate Change** – CCSF is committed to the following greenhouse gas emissions reduction goals: 20% below 1990 levels by 2012, 40% by 2025 and 80% by 2050. In order to meet these goals San Francisco's Department of the Environment is focused on achieving GHG reductions through all its major programs from specific energy and climate work to waste reduction, alternative transportation, and urban forestry.

Funding for work under this Agreement is expected to come from a combination of Federal, State, and foundation or other sources, including: California Public Utilities Commission (CPUC)-authorized ratepayer funds that the City administers under a contract with Pacific Gas and Electric Company (PG&E); American Recovery and Reinvestment Act (ARRA) grants; and budget appropriations and grants received by the Department of the Environment. Work under the contract will be assigned on an as-needed basis through Work Orders. The specific terms and conditions of performing the work will vary depending on the sources of funding for tasks to be accomplished. Specifically:

(1) The San Francisco Energy Watch (SFEW) Program operates under a contract between CCSF and Pacific Gas and Electric Company (PG&E). Any services Contractor is called upon to perform for SFEW will be governed by the terms and conditions of the PG&E contract, and subject to change by decisions of the California Public Utilities Commission (CPUC). The relevant terms and conditions, not already stated in this agreement, to which Contractor must comply when performing Work on SFEW tasks will be included the Work Orders governing those tasks.

Under the PG&E contract, CCSF is held to a cost-effectiveness standard for delivery of kilowatt-hour and therm savings goals. Contractor shall assist Department in meeting this standard and agrees to work collaboratively with Department toward continual improvement of program cost-effectiveness to reach

PG&E contract goals. PG&E may increase or decrease actual funding for the SFEW based on Department performance in achieving goals cost-effectively.

(2) City may fund portions of the Work with Federal ARRA grants. Contractor must comply with requirements for ARRA grants when performing Work funded under ARRA. Where Work under the Contract is funded in whole or part by Energy Efficiency and Conservation Block Grant (EECBG) dollars, Contractor must comply with the requirements for subgrantees set forth in the U.S. Department of Energy's "Assistance Agreement" with the City, which will include: (a) terms and conditions for subgrantees set forth in 10 CFR part 600.200 (Subpart C, Uniform Administrative Requirements for Grants to Local Governments) (<http://ecfr.gpoaccess.gov>), (b) special program regulations for work funded under American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, including regulations that may be issued by the Office of Management and Budget and the U.S. Department of Energy, (c) national policy assurances (http://management.energy.gov/business_doe/business_forms.htm), and (d) terms and conditions set forth in the EECBG award document. U.S. Department of Energy approval is required for contracts using EECBG and other ARRA monies. City and Contractor intend to amend this contract to add the terms and conditions applicable to Work Orders to be funded with EECBG and other ARRA monies prior to issuing such Work Order.

(3) Work funded exclusively by unrestricted grants and other sources is subject to the City's standard terms and conditions.

The Scope of Work below is to be used as a general guide and is not intended to be a complete list of all work necessary to fulfill the Department's needs. The list is not exhaustive, and consultants may be called upon for other services within their expertise and the scope of this Agreement.

Contractor will not begin any work on any project until the Department has issued a Work Order as set forth in Section 4 of the Agreement.

SCOPE OF WORK PART 1: Implementation of Incentive Programs

The Department operates SFEW with funding authorized by the California Public Utilities Commission under a contract with PG&E. The program processes approximately \$3 million of incentive payments annually and serves the commercial and multi-family sectors. The program will add new market sectors and new technologies during the course of this contract as determined by the Department.

Beginning in 2010, the SFEW program will be augmented by ARRA funding and other funding sources. Also in 2010, the City intends to establish a tax lien financing program to fund energy improvements for privately owned buildings. Contractor will be required to track projects and funding for all Work Orders in the same database as SFEW projects, but report on specific Work Orders in accordance with separate funding requirements.

Contractor, working closely with Department staff, will perform the following tasks in support of Department's various incentive programs and under the terms governing each funding source.

A. Administrative and Technical Support

1. Assist CCSF in identifying commercial, non-profit, multi-family, and single-family energy projects for program participation.
2. Recruit installation contractors with specific outreach to small local businesses and businesses that employ local workers, train them on program procedures and standards, and oversee their performance.

3. Receive and process project applications, checking for completeness and accuracy, methodologies used, and reasonableness of savings estimates and construction cost estimates.
4. Perform quality control inspections of project sites applying protocols identified by CCSF to meet the requirements of funders and administrators such as the California Public Utilities Commission (CPUC), PG&E, U.S. Department of Energy, California Energy Commission and others.
5. Enter project data into a database for tracking and reporting. Information captured includes, but is not limited to, site-specific information, contact information, utility account information, hours of operation, recommended measures installed, projected energy savings in kW, kWh and therms, project costs, incentive amount, and customer cost.
6. Issue incentive payments to contractors in amounts established by CCSF through a cash revolving fund for quick payment of approved and completed projects.
7. Provide CCSF with weekly updates and monthly invoices and reports on all program activities as required.
8. Assist in development, upgrade, and/or maintenance of a customer database system with the capacity to meet new and changing information, along with continued tracking and reporting of utility account numbers and usage data, rate schedules, measures installed, rebates, etc.
9. Conduct customer satisfaction surveys and analysis and assist in development of after-market services including enforcement of warranties for the measures installed.
10. Participate in evaluation activities as directed by CCSF.
11. Perform other tasks necessary for successful program implementation.

SCOPE OF WORK PART 2: General Consulting Services (B through M)

B. Regulations and Policy

1. Assist in the development of policies, regulations, and ordinances. This may include identifying goals and strategies of forming new public policy or amending existing policy as well as quantifying potential impacts and performing studies needed to support the policy development. Impacts to be quantified may include energy savings, reduction in greenhouse gases, workforce needs, and local economic development.

C. Program Design and Development

1. Identify new programs/projects or improve existing programs that would be appropriate for CCSF to undertake to promote renewable energy, reduce energy consumption and conserve resources. These could include either new construction or retrofit in both the residential and non-residential sectors, or in targeted segments within each sector. Under the guidance of Department staff, prepare proposals, reports, data analysis, evaluations, or other documents in support of program development or program implementation.
2. Assist staff on development of new program design or improving existing program design through needs assessment for customer groups; pilot project design and evaluation; and impact

potential. The work may include advising the staff on cost-efficiency, market penetration strategies, the merits of program alternatives based on renewable energy or energy savings potential, success elsewhere of similar programs, ease of monitoring and verification, developing standards and protocols, etc.

3. Provide assistance in developing technical scopes of work for energy auditing, resource assessment, design, materials, equipment, construction management, and related services.
4. Review professional services proposals for audit, assessment, design, materials, equipment, and construction management services for completeness and cost-efficiency.
5. Assist staff in adapting existing procedures and standards or develop new ones for each phase of program implementation. Phases may include auditor training, sales protocol, audit protocol, audit reporting, design specifications, standardized price estimates, customer contracts, financing forms, construction contracts, construction management, product warranties and customer evaluation forms.
6. Prepare financial modeling and business case development studies for efficiency and/or renewable power generation planning and implementation.

D. Program Implementation

1. Assist CCSF in identifying commercial, non-profit, multi-family, and single family properties as well as other types of sites that meet requirements for energy or climate projects undertaken by the Department.
2. Assist in developing and expanding a core of vendors/contractors to participate in programs with focus on local businesses and businesses that employ local workers.
3. Work with existing financing mechanisms for customers to receive funding for capital investments related to improvements.
4. Assist in development, upgrade, and/or maintenance of a customer database system with the capacity to track information other than the data listed in Part I.A.8.
5. Develop and implement a quality assurance and quality control protocol to meet the requirements of funders and administrators such as the California Public Utilities Commission (CPUC), PG&E, U.S. Department of Energy, California Energy Commission and others.
6. Track and report to CCSF on all program activities as required. Reports may include data about number of customers contacted, audits performed, reports presented, jobs accepted, and installations completed as well as estimates of monthly and to-date kW, kWh, and therm savings, costs, costs to customers, types of buildings, and other data as requested by CCSF.
7. Assist in the development of surveys, analysis, forecasts and after-market services including enforcement of warranties for the measures installed for projects other than those governed under Part I.A above.
8. Create reports for customers containing basic project information including site-specific information, contact information, language needs, utility account information and hours of operation. Reports could provide detailed energy efficiency and/or renewable energy recommendations, estimates of gross project costs, incentives provided and estimated costs to the

customer. Reports may also include savings summaries for recommended measures installed, including projected energy savings in kW, kWh and therms, as well as CO₂ emissions reductions and cost savings values of reduced energy use, simple payback, ROI and other financial information.

9. Participate in program evaluation activities as directed by CCSF.

E. Technical Assistance

1. Develop calculation tools and technical work papers.
2. Conduct pre- and post-installation verification of retrofits.
3. Perform energy savings analysis, including due-diligence reviews of renewable energy technologies and energy efficiency measures.
4. Conduct audits/assessments of residential and commercial properties. Audits/assessments may include basic information about the building; a detailed account of energy using equipment and hours of operation; a detailed list of no- and low-cost recommendations, and retrofit/installation recommendations. Systems covered in an audit may include lighting, lighting controls, heating, ventilating, and air conditioning (HVAC), HVAC controls, refrigeration, natural gas boilers, and water heating systems and renewable energy potential.
5. Review audit reports for completeness, methodologies used, and reasonableness of savings estimates and construction cost estimates.
6. Conduct building performance tests using techniques such as blower doors, duct blasters, and infrared cameras; prepare detailed reports that include recommendations for upgrades including a cost-effective analysis of all options available.
7. Prepare feasibility studies that include estimating the cost and energy savings of the proposed measures, the operations and maintenance (O&M) cost impact, life cycle cost and anticipated carbon savings. Analyses may include developing energy use baselines, creating load profiles, and producing schematics. These analyses may necessitate the use of computer modeling techniques, securing and analyzing customer meter data, the installation of specialized monitoring equipment, and post-construction site visits.
8. Identify issues and estimate costs associated with meeting applicable building codes, fire codes, asbestos abatement, inspection, and waste disposal.
9. Prepare feasibility studies for an integrated approach to building retrofits (alternative energy strategies, recycled and low-emitting content materials, indoor air quality, water conservation and recycling opportunities).
10. Conduct pre-feasibility, feasibility, technical potential and market studies for renewable energy technologies, including cogeneration, fuel cells, solar, urban wind, geothermal heat pumps, and wave and tidal power. These could include market penetration potential, evaluation of market sectors, program performance by market sector, etc.
11. Provide services in languages other than English.

F. Climate Inventory and Certification

1. Assist staff in updating departmental, municipal and or community-wide greenhouse gas emissions inventories. Phases include data collection, organizational management, analysis and final reporting.
2. Review greenhouse gas emissions inventories conducted by the Department. The Department will be responsible to correct any deficiencies discovered by the review. Contractor must be eligible or licensed to certify the inventory to the California Climate Action Registry and The Climate Registry. Contractor may also be requested to report to other registries as directed by the Department.

G. Resource Mapping

1. Develop high-resolution, citywide sustainable energy resource and climate data map(s).
2. Use aerial imagery, 3-D modeling and other tools to evaluate the renewable energy potential for buildings within CCSF, taking into consideration the local resource, building/roof materials, location, surface obstructions, shading objects, permitting requirements, and other factors affecting buildings' ability to harness renewable energy.
3. Utilize existing municipal and community-wide energy and transportation data points and assemble other relevant climate data (as specified by San Francisco Department of Environment) into a community wide climate and energy map to assess appropriate neighborhood and community-wide climate policies and assess community-wide vulnerability.
4. Develop web sites and/or web-based tools for displaying energy and climate map(s).
5. Create open source databases allowing CCSF to access data on renewable energy potential of addresses within CCSF.
6. Create open source database and or build on existing in house GIS mapping database to house all GHG inventory and other climate data with built-in ability to add data categories in the future.

H. Marketing

1. 1. Conduct market potential studies. These could include market penetration potential, evaluation of market sectors, program performance by market sector, etc.
2. Adapt existing marketing materials or develop new ones including materials that are appropriate to San Francisco's culturally and linguistically diverse community. Marketing materials may include emails, brochures, leaflets, posters, web sites, presentations, press releases, print advertising.
3. Implement marketing plans including: producing marketing materials, distributing materials, scheduling press events and marketing events, and making presentations at events.
4. Develop strategic outreach plan to include various residential and commercial sectors, specific technologies, vendor groups, etc.
5. Provide services in languages other than English.

I. Information and Training

1. Design and develop informational and training programs targeting various sectors including: real estate developers, financiers, building owners, building managers, design professionals, and maintenance professionals.
2. Assist CCSF staff in developing informational presentations, training sessions, and training materials.
3. Conduct workshops in support of programs.
4. Train vendors and contractors in whole building performance, new technologies, and integrated approaches to building improvements.
5. Provide services in languages other than English.

J. Design and Specification

1. Review of contractor or project design documents for approach and completeness.
2. Specify the task objective and scope of work for energy measures, water use, indoor environmental quality, renewable energy options, combined heat and power, and building materials.
3. Specify the quantities and types of equipment to be installed and simple drawings noting where they are to be installed.
4. Provide specifications for materials, installation, and commissioning (including training).
5. Prepare mechanical and electrical drawings and specifications to accurately describe the implementation and commissioning of the recommended measures. Include alternative efficiency and green building strategies, for example, the use of daylighting, indirect lighting, high efficiency motors, renewable energy, water reuse, etc.

K. Construction Management

1. Provide construction administration and inspection such as inspecting work progress and reviewing contractor's construction drawings to determine adherence with the recommended design.
2. Prepare punch lists and review execution of punch lists and other construction management tasks as necessary.
3. Conduct review of service levels provided during construction management for consistency with standard practices, and completeness.
4. Locate contractors who are sensitive to the cultural expectations of the neighborhood and who will commit to City goals for workforce development and hiring locally owned businesses.

L. Building Commissioning Assistance

1. Prepare and/or review commissioning plans for projects. Plans may describe the tasks of the commissioning agent, such as design documentation; planning and conducting functional

performance testing; operations and maintenance training and documentation; and other tasks related to commissioning.

2. Prepare commissioning language to be included in construction bid documents to specify responsibilities of the construction contractors.
3. Serve as commissioning agent for some smaller projects. Duties may include preparing a commissioning plan and implementing each element, including on-site functional testing and training for building engineers.

M. Other Tasks

1. As programs are developed and materialize, consultants may be requested to provide expertise in connection with other Energy Efficiency, Renewable Energy and Climate Change programs and initiatives.

II. REPORTS

Contractor shall submit written reports as requested by the Department of the Environment. Format for the content of such reports shall be determined by the Department of the Environment. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

III. DEPARTMENT LIASON

In performing the services provided for in this Agreement, Contractor's liaison with the Department of the Environment will be Ann Kelly, Energy Efficiency Programs Manager, unless otherwise notified.

**Appendix B
Calculation of Charges
ICF Resources, L.L.C.**

During the term of this contract, City shall pay Contractor on a time and material basis for labor and indirect costs; and, when working on an incentive-payment program, in accordance with the terms described in Section 2 below. Tasks will be assigned using Work Orders, which will describe tasks and indicate a not-to-exceed dollar amount for completion of tasks.

1. Time and Materials Payments

Time: The City shall make payment for Contractor's labor following receipt of an invoice indicating project and tasks, and listing personnel, hourly rate, and number of hours worked. Billing rates reflect labor plus indirect costs. Rates should not exceed the amounts provided in Table B-1 below for the first year of the contract, with rate increases of up to 3% during each successive year, upon written approval of the Program Manager.

TABLE B-1: FEE SCHEDULE

Position/Job Class (ICF)	\$/Hour
Officer-in-Charge	275
Manager	200
Program Manager	180
Project/Construction Manager	180
Project Manager	150
Architect	160
Senior Engineer	160
Associate Engineer	140
Auditor	130
Junior Auditor	80
Junior Professional Staff	120
Data Analyst	100
Marketer	100
Research/Writer	100
Administrative	100
Clerk	80
Position/Job Class (Subcontractors)	\$/Hour
Stantec	200
Enovity	230
Simon & Associates	235
Sustainable Design Resources	150
Construction Management West	160
Urban Solutions	80
Jungle Communications	175

Materials/Other Direct Costs: Contractor must provide receipts and/or other documentation of proof of expenditures for charges for materials purchased in performance of project tasks and for other direct costs. Direct charges shall be invoiced at cost.

Subcontractor Costs: Contractor's invoice must include all Subcontractor charges including subcontractor(s) invoice(s) for time as defined above, and receipts and/or other documentation of proof of expenditures for materials and other direct costs. Contractor's invoice may include an additional administrative fee of 5% on Subcontractor costs, listed clearly as a separate charge.

2. Incentive Payments

City shall pay Contractor for the incentive portion of installation of energy savings measures based on actual costs of energy efficiency equipment and/or installation costs of eligible projects. Under no circumstances can incentive funds be used to cover administrative or other indirect costs. During the term of this agreement, City will pay incentives for projects governed by one or more funding sources, each with its own set of requirements. Contractor shall follow guidelines issued with Work Orders regarding eligibility, incentive levels, reporting requirements, and any other directives governing payment from specified funds.

Incentive Account: City shall pay Contractor incentive payments due under this Agreement in advance ("Incentive Advance") as follows:

(i) Wherever City determines, in its discretion, that Contractor will be assigned tasks that include payment of incentives, City may pay Contractor up to \$400,000 to be used solely for payment by Contractor of incentives to its installation subcontractors, vendors, businesses or residents that become due and owing under the Agreement.

(ii) Contractor shall make incentive payments from the Incentive Advance to its installation subcontractors, vendors, businesses or residents as such payments become due and owing. Contractor will then invoice the City for such incentive payments made from the Incentive Advance.

(iii) Upon approval of such invoices, City shall restore to Contractor the invoiced amount, up to the original Incentive Advance balance, or such lesser amount as may remain in the program budget. When Contractor receives payment from the City for the incentive payments Contractor made from the Incentive Advance, Contractor shall promptly (and within no more than five business days) restore such amount to the Incentive Advance account to be utilized as provided in subsection (ii) above. At completion of the program (or depletion of the incentive payment budget), the Incentive Advance will have a zero balance.

(iii) Contractor shall, at all times, maintain the Incentive Advance funds separate and apart from all of its other accounts. Contractor may not use or apply any portion of the Incentive Advance for any purpose other than payment of incentive payments due and owing to installation contractors, vendors, or PG&E customers.

(iv) Monies received as Incentive Advance are subject to all provisions of the Agreement, including but not limited to, Section 11, "Payment does not Imply Acceptance of Work," Section 7, "Payment; Invoice Format," and Section 28, "Audit and Inspection of Records."

3. Payment Schedule

City shall pay Contractor within 30 days of City approval of an invoice. Payments are contingent on the satisfactory completion of all time and material tasks and/or installation projects.

PG&E SUPPLIER DIVERSITY PURCHASING POLICY

CONTRACTORS AND SUBCONTRACTORS OF ALL TIERS MUST COMPLY WITH PG&E'S SUPPLIER DIVERSITY PURCHASING POLICY IN THE AWARD OF ALL SUBCONTRACTS AND SUB-SUBCONTRACTS. This policy requires that Women, Minority and Disabled Veteran Business Enterprises (WMDVBEs) shall have the maximum practicable opportunity to participate in the performance of the Work.¹

Contractor shall provide, along with its proposal, a separate, signed Subcontracting Plan consisting of either: (i) a specific list of Subcontractors (including sub-subcontractors) that will participate in the performance of the Work, on the form attached as Exhibit 1-A; or (ii) a statement setting forth the Contractor's goals for WMDVBE subcontracting of all tiers and setting forth such additional good faith efforts Contractor and Subcontractors will employ to increase the participation of WMDVBE in the performance of the Work.

In the event Contractor has not submitted a list of Subcontractors with its proposal, prior to requesting bids for any Subcontract, Contractor and Subcontractor shall submit to PG&E's Procurement Specialist or Contract Administrator, on the form attached as Exhibit 1-A, a list of prospective WMDVBEs that will be invited to compete for such Subcontracts.

Contractor shall submit its subcontracting spend with women, minority and service disabled veteran owned suppliers on a quarterly basis using PG&E's electronic reporting system located at <https://www.pgesupplierdiversity.com/pge/login.asp>.

To establish a user ID, Contractor shall request via email to: diversity@pge.com.

¹ WMDVBEs must be verified pursuant to the procedures prescribed in Section 2 of CPUC General Order 156.

- * Refer to Instructions/Codes/Definitions.
- ** V = Subcontractor is a **verified** WBE, MBE certified by the CPUC Clearinghouse, or a **verified** DVBE certified by the Office of Small Business Certification and Resource.
- *** NV = Subcontractor is **not verified**.

STEP-BY-STEP INSTRUCTIONS

1. Complete column numbers 1-7 and return this form with your bid proposal.
2. Please attach copies of WMDVBE Subcontractor s/subsuppliers certifications with your bid proposal.
3. Complete column number 8 with the actual payments to WMDVBE subcontractor s/subsuppliers for the PG&E work that was performed.
4. Send a copy of this form no later than the 15th day of each month for the previous month to: Supplier Diversity Office, Purchasing Department, Pacific Gas & Electric Company, 245 Market Street, Mail Code N6D, P.O. Box 770000, San Francisco, California, 94177, or (415) 973-2553 (fax).

DEFINITIONS AND CODES:

WBE Women Business Enterprise: A business enterprise that is at least 51 percent owned by a woman or women, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more of those individuals. Must be certified by the California Public Utilities Commission (CPUC) Clearinghouse. For more information call the WMBE Clearinghouse, (800) 359-7998.

MBE Minority Business Enterprise: A business enterprise that is at least 51 percent owned by a minority group or groups, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority-group individuals, and whose management and daily business operations are controlled by one or more of those individuals. Must be certified by the California Public Utilities Commission (CPUC) Clearinghouse. For more information call the WMBE Clearinghouse, (800) 359-7998.

Minority Status:	001	African American Male	008	Hispanic American Female
	002	African American Female	009	Caucasian Male
	003	Asian Pacific American Male	010	Caucasian Female
	004	Asian Pacific American Female	011	Multi-Status
	005	Native American Male	012	Other Groups
	006	Native American Female	013	Small Business Enterprise
	007	Hispanic American Male	014	Service Disabled Veteran Business Enterprise

1233

African Americans Persons having origins in any black racial groups of Africa.

Asian Pacific Americans Persons having origins in Asia or the Indian Subcontinent, including, but not limited to, persons from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, India, Pakistan, and Bangladesh.

Native Americans Persons having origin in any of the original peoples of North America or the Hawaiian islands, in particular, American Indians, Eskimos, Aleuts, and Native Hawaiians.

Hispanic Americans All persons of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, or other Spanish culture or origin.

Caucasian Includes all people of European and North African descent.

Multi-Status An enterprise that is wholly owned and controlled by a combination of minorities or women but whose majority ownership (at least 51%) is not vested with any one of these individuals.

Other Groups Groups whose members are found to be socially and economically disadvantaged by the Small Business Administration pursuant to Section 8 (d) of the Small Business Act as amended (15-U.S.C. 637 (d)), or by the Secretary of Commerce pursuant to Section 5 of Executive Order 11625.

Small Business Enterprise (SBE) A business defined pursuant to Section 3 of the Small Business Act (SBA) and relevant regulations pursuant thereto. If unsure, please contact your local Small Business Administration office for clarification.

Service Disabled Veterans Business Enterprise (DVBE) Has the same meaning as defined in subdivision (g) of the Military and Veterans Code and must meet the "Control" and "Operate" criteria. An enterprise which is 51 percent owned, or the stock is 51 percent owned, by one or more disabled veterans.

EXHIBIT 2

POLICY REGARDING UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS

The following policy of the United States shall be adhered to in the performance of this Contract :

- a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal Agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.
- b) Consultant hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. Consultant further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of Consultant's compliance with this clause.
- c) As used in this Contract, the term "small business concern" shall mean a small business as defined in Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern (1) which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirement of 13 CFR Part 124. Consultant shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act. Consultant shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

Consultant acting in good faith may rely on written representations by its subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.²

² Notwithstanding this provision of the federal statute, all WMDVBE subcontractors must be verified pursuant to the procedures prescribed in Section 2 of CPUC General Order 156, as such procedures may be amended periodically.

Non-Disclosure and Use of Information Agreement

**PACIFIC GAS AND ELECTRIC COMPANY
NONDISCLOSURE AND USE OF INFORMATION AGREEMENT**

THIS AGREEMENT is by and between _____ (hereinafter referred to as "Company").
_____ (hereinafter referred to as "Undersigned") authorized
employee of Company (together, the "Receiving Party"), and PACIFIC GAS AND ELECTRIC COMPANY (hereinafter referred to as
"PG&E") on the date set forth below.

Undersigned and Company agree as follows:

1. The Receiving Party acknowledges that in the course of performing Work under San Francisco Energy Watch, a partnership program between PG&E and the City and County of San Francisco (SFEW), the Receiving Party will be given access to items PG&E considers to be trade secrets, such as confidential commercial or personal information concerning, but not limited to, technological, ratemaking, legislative, and personnel matters and practices of PG&E, its parent company, subsidiaries, and affiliates, and of PG&E's customers or other members of the public, and/or confidential information about specific PG&E customers, such as account numbers and information about a particular customer's monthly or annual energy usage, the disclosure of which could constitute a violation of applicable CPUC rules, PG&E's tariffs, and/or the customer's right of privacy under California law (together referred to as "confidential information").
2. In consideration of being made privy to such confidential information to the extent permitted by law, the Receiving Party hereby agrees to hold the same in strict confidence, and not to disclose it, or otherwise make it available, to any person or third party, including any affiliate of PG&E that produces energy or energy-related products or services, without the prior written consent of PG&E. If disclosure is required by law, Receiving Party shall provide PG&E at least 48 hours' notice of the request, including the name and business affiliation of the requesting party, prior to any disclosure. The Receiving Party agrees that all such confidential information:
 - (a) shall be used only for the purpose of providing Work under SFEW; and
 - (b) shall not be reproduced, copied, in whole or in part, except when necessary for the purposes set forth in (a) above; and
 - (c) shall, together with any copies, reproductions or other materials developed by Undersigned from which confidential information may be segregated or extracted, be returned to PG&E when no longer required for the Undersigned's obligations (including audit recordkeeping obligations) under SFEW. The Receiving Party agrees to abide by all written or oral directives given to Receiving Party concerning PG&E policies and standards governing access to and use of computer resources and specifically to:
 - (a) to use only the user ID, password and Access Card assigned by Information Protection Services for his or her personal use, and
 - (b) to maintain the confidentiality of these authentication keys and protect them from use by others.
4. The Receiving Party hereby agrees that any third parties owning any confidential information are express third party beneficiaries of this Agreement.
5. The Receiving Party hereby agrees that for any violation of any provisions of the Agreement, a restraining order and/or injunction may be issued against the Receiving Party in addition to any other remedy PG&E may have at law.
6. This Agreement shall be governed by and interpreted in accordance with the laws of The State of California.

UNDERSIGNED:

COMPANY

Signature

Name

Title

Company

Date

Company Name

Signature of Authorized Agent of

Name

Title

Date

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

First Amendment

THIS AMENDMENT (this "Amendment") is made as of May 19, 2010, in San Francisco, California, by and between **ICF Resources, L.L.C.**, ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

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

WHEREAS, this Agreement was approved by the Board of Supervisors (Resolution 173-10) April 27, 2010 and signed by the Mayor on May 6, 2010; and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to clarify certain contract provisions;

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

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

a. **Agreement.** The term "Agreement" shall mean the Agreement dated March 19, 2010 between Contractor and City,

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

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

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

1. **Compensation.** Compensation shall be made in monthly payments within 30 days after approval by the City of work, as set forth in Section 4 of this Agreement, that the Director of the **Department of the Environment**, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed as of the last day of the preceding month. In no event shall the amount of this Agreement exceed **Nineteen Million Dollars (\$19,000,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the **Department of the Environment** as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

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

5. **Compensation.** Compensation shall be made in monthly payments within 30 days after approval by the City of work, as set forth in Section 4 of this Agreement, that the Director of the **Department of the Environment**, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed as of the last day of the preceding month. In no event shall the amount of this Agreement exceed **Nineteen Million Dollars (\$19,000,000), which consists of \$6,500,000 in compensation payable to the Contractor and \$12,500,000 in cash rebates to pay for qualifying energy-saving upgrades to commercial and residential property in San Francisco.** The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the **Department of the Environment** as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

b. Appendix B, dated March 19, 2010 is hereby deleted in its entirety and replaced with the attached Appendix B-1, dated May 19, 2010.

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

4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

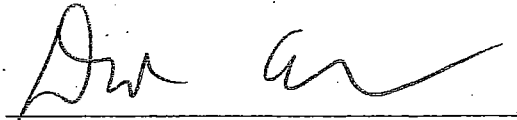
IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY


CONTRACTOR

Recommended by:

ICF Resources, L.L.C.



David Assmann, Acting Director
Department of the Environment



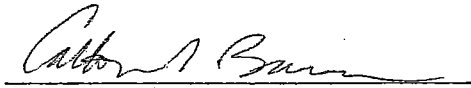
F. Michael Gray
Vice President

Approved as to Form:

Dennis J. Herrera
City Attorney

ICF Resources, L.L.C.
620 Folsom Street, #200
San Francisco, Ca 94107

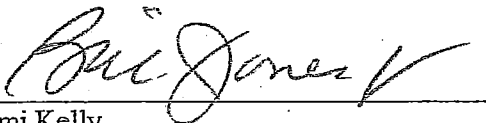
By:



Catharine S Barnes,
Deputy City Attorney

City vendor number: 57811

Approved:



Naomi Kelly
Director of the Office of Contract Administration,
and Purchaser

CALCULATION OF CHARGES

ICF Resources, L.L.C.

During the term of this contract, City shall pay Contractor on a time and material basis for labor and indirect costs; and, when working on an incentive-payment program, in accordance with the terms described in Section 2 below. Tasks will be assigned using Work Orders, which will describe tasks and indicate a not-to-exceed dollar amount for completion of tasks.

1. Time and Materials Payments

Time: The City shall make payment for Contractor's labor following receipt of an invoice indicating project and tasks, and listing personnel, hourly rate, and number of hours worked. Billing rates reflect labor plus indirect costs.

TABLE B-1: FEE SCHEDULE

Position/Job Class	\$/Hour
Officer-in-Charge	\$275
Senior Architect	\$235
Engineering Manager	\$230
Manager	\$200
Principal Engineer	\$200
Program Manager	\$180
Project/Construction Manager	\$180
Senior Graphic Designer	\$175
Project Manager	\$150
Green Building Consultant	\$150
Architect	\$160
Senior Engineer	\$160
Senior Construction Manager	\$160
Associate Engineer	\$140
Database Specialist	\$150
Data Analyst	\$100
Auditor	\$130
Junior Auditor	\$ 80
Junior Program Staff	\$120
Marketer	\$100
Junior Graphic Designer	\$100
Research/Writer	\$100
Administrative	\$100
Bilingual Translation	\$100
Community Outreach	\$ 80
Clerk	\$ 80

This contract extends until July 1, 2014. Billing rates in Table B-1 shall apply as of the effective date of this Agreement and extend through March 31, 2011. Beginning April 1, 2011, and for each subsequent twelve-month period through the term of the contract, billing rates may be increased by the amount of increase in the US Bureau of Labor Statistics, Consumer Price Index, PCU5416, Management and Technical Consulting Services. The base month is December, 2009. The increase shall be based on the increase of December, 2010 over December 2009 for the first calculation. Each following year's calculation will be based on a December to December comparison. If December figures are not available, calculation will be based on the latest available 12 month comparison period.

The new billing rate shall not exceed a 3% increase over the prior year's billing rate.

Contractor must submit a request for an increase in billing rates at least 60 days prior to each April 1 start date in order to receive increased rates for the full twelve month period. The request must include documentation from the US Bureau of Labor Statistics website.

Materials/Other Direct Costs: Contactor must provide receipts and/or other documentation of proof of expenditures for charges for materials purchased in performance of project tasks and for other direct costs. Direct charges shall be invoiced at cost.

Subcontractor Costs: Contractor's invoice must include all Subcontractor charges including subcontractor(s)' invoice(s) for time as defined above, and receipts and/or other documentation of proof of expenditures for materials and other direct costs. Contractor's invoice may include an additional administrative fee of 5% on Subcontractor costs, listed clearly as a separate charge.

2. Incentive Payments

City shall pay Contractor for the incentive portion of installation of energy savings measures based on actual costs of energy efficiency equipment and/or installation costs of eligible projects. Under no circumstances can incentive funds be used to cover administrative or other indirect costs. During the term of this agreement, City will pay incentives for projects governed by one or more funding sources, each with its own set of requirements. Contractor shall follow guidelines issued with Work Orders regarding eligibility, incentive levels, reporting requirements, and any other directives governing payment from specified funds.

Incentive Account: City shall pay Contractor incentive payments due under this Agreement in advance ("Incentive Advance") as follows:

(i) Wherever City determines, in its discretion, that Contractor will be assigned tasks that include payment of incentives, City may pay Contractor up to \$400,000 to be used solely for payment by Contractor of incentives to its installation subcontractors, vendors, businesses or residents that become due and owing under the Agreement.

(ii) Contractor shall make incentive payments from the Incentive Advance to its installation subcontractors, vendors, businesses or residents as such payments become due and owing. Contractor will then invoice the City for such incentive payments made from the Incentive Advance.

(iii) Upon approval of such invoices, City shall restore to Contractor the invoiced amount, up to the original Incentive Advance balance, or such lesser amount as may remain in the program budget. When Contractor receives payment from the City for the incentive payments Contractor made from the Incentive Advance, Contractor shall promptly (and within no more than five business days) restore such amount to the Incentive Advance account to be utilized as provided in subsection (ii) above. At completion of the program (or depletion of the incentive payment budget), the Incentive Advance will have a zero balance.

(iii) Contractor shall, at all times, maintain the Incentive Advance funds separate and apart from all of its other accounts. Contractor may not use or apply any portion of the Incentive Advance for any purpose other than payment of incentive payments due and owing to installation contractors, vendors, or PG&E customers.

(iv) Monies received as Incentive Advance are subject to all provisions of the Agreement, including but not limited to, Section 11, "Payment does not Imply Acceptance of Work," Section 7, "Payment; Invoice Format," and Section 28, "Audit and Inspection of Records."

3. Payment Schedule

City shall pay Contractor within 30 days of City approval of an invoice. Payments are contingent on the satisfactory completion of all time and material tasks and/or installation projects.

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

Second Amendment

THIS AMENDMENT (this "Amendment") is made as of August 4, 2010 in San Francisco, California, by and between **ICF Resources, L.L.C.**, ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and
WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to modify the amount available for incentive payments;

WHEREAS, the portion of the Work under this Agreement funded through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5 has been increased to provide for additional incentive payments as defined in the contract; and

WHEREAS, Contractor represents that it has coverage under a Fidelity Bond naming the City as payee or obligee in a form acceptable to the City's Risk Manager and in an amount that City reasonably determines would cover the risk of loss, misuse or misappropriation of such advances.

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

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

a. **Agreement.** The term "Agreement" shall mean the Agreement dated March 19, 2010 between Contractor and City, as amended by the:

First amendment, dated May 19, 2010.

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

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

a. Appendix B-1, dated May 19, 2010 is hereby deleted in its entirety and replaced with the attached Appendix B-2, dated August 4, 2010.

2b. **Submitting False Claims; Monetary Penalties.** Section 8 is hereby replaced in its entirety to read as follows:

8. Submitting False Claims; Monetary Penalties.

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

2c Requiring Minimum Compensation for Covered Employees. Section 43 is hereby replaced in its entirety to read as follows:

43. Requiring Minimum Compensation for Covered Employees

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

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

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

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

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

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

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

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

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

2d. Requiring Health Benefits for Covered Employees. Section 44 is hereby replaced in its entirety to read as follows:

44. Requiring Health Benefits for Covered Employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

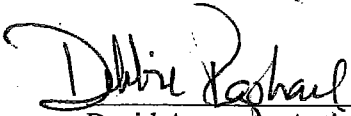
IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

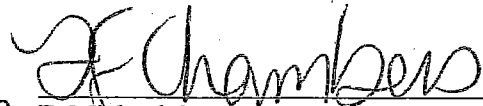
CITY

CONTRACTOR

Recommended by:

ICF Resources, L.L.C.

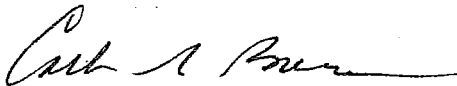

For David Assman
David Assman, Acting Director
Department of the Environment


for F. Michael Gray
Vice President

Approved as to Form:


Dennis J. Herrera
City Attorney

ICF Resources, L.L.C.
620 Folsom Street, #200
San Francisco, Ca 94107

By: 
Catharine S Barnes
Deputy City Attorney

City vendor number: 57811

Approved:


Naomi Kelly
Director of the Office of Contract Administration,
and Purchaser

CALCULATION OF CHARGES

ICF Resources, L.L.C.

During the term of this contract, City shall pay Contractor on a time and material basis for labor and indirect costs; and, when working on an incentive-payment program, in accordance with the terms described in Section 2 below. Tasks will be assigned using Work Orders, which will describe tasks and indicate a not-to-exceed dollar amount for completion of tasks.

1. Time and Materials Payments

Time: The City shall make payment for Contractor's labor following receipt of an invoice indicating project and tasks, and listing personnel, hourly rate, and number of hours worked. Billing rates reflect labor plus indirect costs.

TABLE B-1: FEE SCHEDULE

Position/Job Class	\$/Hour
Officer-in-Charge	\$275
Senior Architect	\$235
Engineering Manager	\$230
Manager	\$200
Principal Engineer	\$200
Program Manager	\$180
Project/Construction Manager	\$180
Senior Graphic Designer	\$175
Project Manager	\$150
Green Building Consultant	\$150
Architect	\$160
Senior Engineer	\$160
Senior Construction Manager	\$160
Associate Engineer	\$140
Database Specialist	\$150
Data Analyst	\$100
Auditor	\$130
Junior Auditor	\$ 80
Junior Program Staff	\$120
Marketer	\$100
Junior Graphic Designer	\$100
Research/Writer	\$100
Administrative	\$100
Bilingual Translation	\$100
Community Outreach	\$ 80
Clerk	\$ 80

This contract extends until July 1, 2014. Billing rates in Table B-1 shall apply as of the effective date of this Agreement and extend through March 31, 2011. Beginning April 1, 2011, and for each subsequent twelve-month period through the term of the contract, billing rates may be increased by the amount of increase in the US Bureau of Labor Statistics, Consumer Price Index, PCU5416, Management and Technical Consulting Services. The base month is December, 2009. The increase shall be based on the increase of December, 2010 over December 2009 for the first calculation. Each following year's calculation will be based on a December to December comparison. If December figures are not available, calculation will be based on the latest available 12 month comparison period.

The new billing rate shall not exceed a 3% increase over the prior year's billing rate.

Contractor must submit a request for an increase in billing rates at least 60 days prior to each April 1 start date in order to receive increased rates for the full twelve month period. The request must include documentation from the US Bureau of Labor Statistics website.

Materials/Other Direct Costs: Contractor must provide receipts and/or other documentation of proof of expenditures for charges for materials purchased in performance of project tasks and for other direct costs. Direct charges shall be invoiced at cost.

Subcontractor Costs: Contractor's invoice must include all Subcontractor charges including subcontractor(s)' invoice(s) for time as defined above, and receipts and/or other documentation of proof of expenditures for materials and other direct costs. Contractor's invoice may include an additional administrative fee of 5% on Subcontractor costs, listed clearly as a separate charge.

2. Incentive Payments

City shall pay Contractor for the incentive portion of installation of energy savings measures based on actual costs of energy efficiency equipment and/or installation costs of eligible projects. Under no circumstances can incentive funds be used to cover administrative or other indirect costs. During the term of this agreement, City will pay incentives for projects governed by one or more funding sources, each with its own set of requirements. Contractor shall follow guidelines issued with Work Orders regarding eligibility, incentive levels, reporting requirements, and any other directives governing payment from specified funds.

Incentive Account: City shall pay Contractor incentive payments due under this Agreement in advance ("Incentive Advance") as follows:

(i) Wherever City determines, in its discretion, that Contractor will be assigned tasks that include payment of incentives, City may pay Contractor up to \$825,000 to be used solely for payment by Contractor of incentives to its installation subcontractors, vendors, businesses or residents that become due and owing under the Agreement.

(ii) Contractor shall make incentive payments from the Incentive Advance to its installation subcontractors, vendors, businesses or residents as such payments become due and owing. Contractor will then invoice the City for such incentive payments made from the Incentive Advance.

(iii) Upon approval of such invoices, City shall restore to Contractor the invoiced amount, up to the original Incentive Advance balance, or such lesser amount as may remain in the program budget. When Contractor receives payment from the City for the incentive payments Contractor made from the Incentive Advance, Contractor shall promptly (and within no more than five business days) restore such amount to the Incentive Advance account to be utilized as provided in subsection (ii) above. At completion of the program (or depletion of the incentive payment budget), the Incentive Advance will have a zero balance.

(iii) Contractor shall, at all times, maintain the Incentive Advance funds separate and apart from all of its other accounts. Contractor may not use or apply any portion of the Incentive Advance for any purpose other than payment of incentive payments due and owing to installation contractors, vendors, or PG&E customers.

(iv) Monies received as Incentive Advance are subject to all provisions of the Agreement, including but not limited to, Section 11, "Payment does not Imply Acceptance of Work," Section 7, "Payment; Invoice Format," and Section 28, "Audit and Inspection of Records."

3. Payment Schedule

City shall pay Contractor within 30 days of City approval of an invoice. Payments are contingent on the satisfactory completion of all time and material tasks and/or installation projects.

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

Third Amendment

THIS AMENDMENT (this "Amendment") is made as of September 1, 2010 in San Francisco, California, by and between **ICF Resources, L.L.C.**, ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and
WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to modify the amount available for incentive payments;

WHEREAS, the portion of the Work under this Agreement funded through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5 has been increased to provide for additional incentive payments authorized under the Agreement; and

WHEREAS, Contractor will provide a Fidelity Bond to cover the risk of loss, misuse or misappropriation of incentive advances authorized under the Agreement up to \$1,100,000.

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

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

a. Agreement. The term "Agreement" shall mean the Agreement dated March 19, 2010 between Contractor and City, as amended by the:

First Amendment, dated May 19, 2010,
Second Amendment, dated August 4, 2010.

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

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

a. Appendix B-2, dated August 4, 2010 is hereby deleted in its entirety and replaced with the attached Appendix B-3, dated September 1, 2010.

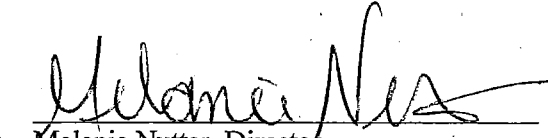
3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

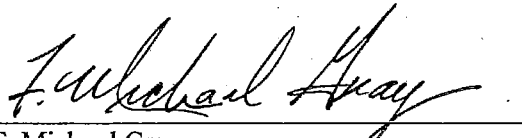
CITY

Recommended by:


Melanie Nutter, Director
Department of the Environment

CONTRACTOR


ICF Resources, L.L.C.


F. Michael Gray
Vice President

Approved as to Form:

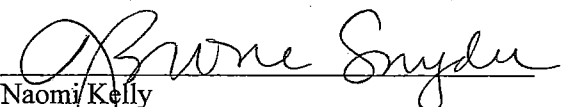
Dennis J. Herrera
City Attorney

ICF Resources, L.L.C.
620 Folsom Street, #200
San Francisco, Ca 94107

By: 
Catharine S Barnes
Deputy City Attorney

City vendor number: 57811

Approved:


Naomi Kelly
Director of the Office of Contract Administration,
and Purchaser

CALCULATION OF CHARGES

ICF Resources, L.L.C.

During the term of this contract, City shall pay Contractor on a time and material basis for labor and indirect costs; and, when working on an incentive-payment program, in accordance with the terms described in Section 2 below. Tasks will be assigned using Work Orders, which will describe tasks and indicate a not-to-exceed dollar amount for completion of tasks.

1. Time and Materials Payments

Time: The City shall make payment for Contractor's labor following receipt of an invoice indicating project and tasks, and listing personnel, hourly rate, and number of hours worked. Billing rates reflect labor plus indirect costs.

TABLE B-1: FEE SCHEDULE

Position/Job Class	\$/Hour
Officer-in-Charge	\$275
Senior Architect	\$235
Engineering Manager	\$230
Manager	\$200
Principal Engineer	\$200
Program Manager	\$180
Project/Construction Manager	\$180
Senior Graphic Designer	\$175
Project Manager	\$150
Green Building Consultant	\$150
Architect	\$160
Senior Engineer	\$160
Senior Construction Manager	\$160
Associate Engineer	\$140
Database Specialist	\$150
Data Analyst	\$100
Auditor	\$130
Junior Auditor	\$ 80
Junior Program Staff	\$120
Marketer	\$100
Junior Graphic Designer	\$100
Research/Writer	\$100
Administrative	\$100
Bilingual Translation	\$100
Community Outreach	\$ 80
Clerk	\$ 80

This contract extends until July 1, 2014. Billing rates in Table B-1 shall apply as of the effective date of this Agreement and extend through March 31, 2011. Beginning April 1, 2011, and for each subsequent twelve-month period through the term of the contract, billing rates may be increased by the amount of increase in the US Bureau of Labor Statistics, Consumer Price Index , PCU5416, Management and Technical Consulting Services. The base month is December, 2009. The increase shall be based on the increase of December, 2010 over December 2009 for the first calculation. Each following year's calculation will be based on a December to December comparison. If December figures are not available, calculation will be based on the latest available 12 month comparison period.

The new billing rate shall not exceed a 3% increase over the prior year's billing rate.

Contractor must submit a request for an increase in billing rates at least 60 days prior to each April 1 start date in order to receive increased rates for the full twelve month period. The request must include documentation from the US Bureau of Labor Statistics website.

Materials/Other Direct Costs: Contractor must provide receipts and/or other documentation of proof of expenditures for charges for materials purchased in performance of project tasks and for other direct costs. Direct charges shall be invoiced at cost.

Subcontractor Costs: Contractor's invoice must include all Subcontractor charges including subcontractor(s)' invoice(s) for time as defined above, and receipts and/or other documentation of proof of expenditures for materials and other direct costs. Contractor's invoice may include an additional administrative fee of 5% on Subcontractor costs, listed clearly as a separate charge.

2. Incentive Payments

City shall pay Contractor for the incentive portion of installation of energy savings measures based on actual costs of energy efficiency equipment and/or installation costs of eligible projects. Under no circumstances can incentive funds be used to cover administrative or other indirect costs. During the term of this agreement, City will pay incentives for projects governed by one or more funding sources, each with its own set of requirements. Contractor shall follow guidelines issued with Work Orders regarding eligibility, incentive levels, reporting requirements, and any other directives governing payment from specified funds.

Incentive Account: City shall pay Contractor incentive payments due under this Agreement in advance ("Incentive Advance") as follows:

(i) Wherever City determines, in its discretion, that Contractor will be assigned tasks that include payment of incentives, City may pay Contractor up to **\$1,100,000** to be used solely for payment by Contractor of incentives to its installation subcontractors, vendors, businesses or residents that become due and owing under the Agreement.

(ii) Contractor shall make incentive payments from the Incentive Advance to its installation subcontractors, vendors, businesses or residents as such payments become due and owing. Contractor will then invoice the City for such incentive payments made from the Incentive Advance.

(iii) Upon approval of such invoices, City shall restore to Contractor the invoiced amount, up to the original Incentive Advance balance, or such lesser amount as may remain in the program budget. When Contractor receives payment from the City for the incentive payments Contractor made from the Incentive Advance, Contractor shall promptly (and within no more than five business days) restore such amount to the Incentive Advance account to be utilized as provided in subsection (ii) above. At completion of the program (or depletion of the incentive payment budget), the Incentive Advance will have a zero balance.

(iii) Contractor shall, at all times, maintain the Incentive Advance funds separate and apart from all of its other accounts. Contractor may not use or apply any portion of the Incentive Advance for any purpose other than payment of incentive payments due and owing to installation contractors, vendors, or PG&E customers.

(iv) Monies received as Incentive Advance are subject to all provisions of the Agreement, including but not limited to, Section 11, "Payment does not Imply Acceptance of Work," Section 7, "Payment; Invoice Format," and Section 28, "Audit and Inspection of Records."

3. Payment Schedule

City shall pay Contractor within 30 days of City approval of an invoice. Payments are contingent on the satisfactory completion of all time and material tasks and/or installation projects.

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

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: ICF Resources LLC	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
<ol style="list-style-type: none"> 1. Eileen Auen, Edward Ersoff, Srikant Datar, Cheryl Grise, Sudhakar Kesavan, Larry Kercot, Ernest Moniz, Peter Schulte. 2. Sudhakar Kesavan, CEO; James Morgan, CFO; John Wasso, COO. 3. NA 4. NA 5. NA 	
Contractor address: 620 folsom Street, 2 nd Floor; San Francisco, CA 94107	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: \$19,000,000
Describe the nature of the contract that was approved: Professional Services contract – Energy efficiency, climate change, and other environmental services	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

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

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

Print Name of Board

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

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

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

