

File No. 220600

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: July 7, 2022

Board of Supervisors Meeting:

Date: _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input 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 |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
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OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Office of the City Administrator Memorandum 05/13/22</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>President Action Memorandum 06/06/22</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Office of the City Administrator Presentation 06/16/22</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Committee Packet 06/16/22</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Preston Committee Report 06/30/22</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Proposed Agreement</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>BLA Report 070122</u> |

Prepared by: Jessica Perkinson

Date: June 30, 2022

Prepared by: _____

Date: _____

Prepared by: _____

Date: _____

1 [Contract - Lystek International Limited - Class A Biosolids Management Services - Not
2 to Exceed \$22,800,000]

3 **Resolution authorizing the Office of Contract Administration to enter into**
4 **PeopleSoft Contract ID 1000025273 between the City and County of San**
5 **Francisco and Lystek International Limited for the provision of Class A Biosolids**
6 **management services with an initial contract not to exceed amount of**
7 **\$16,400,000 for five years and \$6,400,000 for two optional extension years for a**
8 **total not to exceed amount of \$22,800,000 and total contract duration of seven**
9 **years commencing on July 1, 2022, and ending on June 30, 2029.**

10

11 WHEREAS, Charter, Section 9.118(b), requires the Board of Supervisors to
12 approve by Resolution contracts estimated to cost the City \$10,000,000 or more; and

13 WHEREAS, The contract referenced above is on file with the Clerk of the Board of
14 Supervisors in File No. 220600, which is hereby declared to be part of this Resolution as
15 if set forth fully herein; and

16 WHEREAS, This Contract was competitively procured as required by
17 Administrative Code, Chapter 21.1, through an Invitation for Bids issued by the Office of
18 Contract Administration on March 29, 2022, under Sourcing Event 0000006728 for the
19 production and management of Class A biosolids; and

20 WHEREAS, Sourcing Event 0000006728 resulted in the award of Aggregate 1 to
21 Lystek International Limited as the lowest responsive bidder (PeopleSoft Contract ID
22 1000025273); and

23 WHEREAS, this is a contract for Services and the Local Business Entity (“LBE”)
24 subcontracting participation requirement for the Services has been waived; and

25

1 WHEREAS, Annually, the Oceanside and Southeast wastewater treatment
2 facilities produce approximately 60,000 tons of biosolids, which are nutrient rich solids
3 produced during wastewater treatment; and

4 WHEREAS, The conversion of these biosolids into Class A biosolids and their
5 subsequent use is a service necessary for the management of this material;

6 RESOLVED, That the Board of Supervisors, under Charter, Section 9.118(b),
7 hereby authorizes the Purchaser and Director of the Office of Contract Administration
8 to execute PeopleSoft Contract ID 1000025273 between the City and County of San
9 Francisco and Lystek International Limited for the provision of Class A Biosolids
10 management services with an initial contract not to exceed amount of \$16,400,000 for
11 five years and \$6,400,000 for two optional extension years for a total not to exceed
12 amount of \$22,800,000 and total contract duration of seven years commencing on July
13 1, 2022, and ending on June 30, 2029; and, be it

14 FURTHER RESOLVED, That within 30 days of the contracts being fully
15 executed by all parties, the Purchaser shall provide the final copies of the contracts to
16 the Clerk of the Board for inclusion into the official file.

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DATE: May 13, 2022
TO: Angela Calvillo, Clerk of the Board
FROM: Sailaja Kurella, Acting Director of Office of Contract Administration (OCA) and Purchaser
SUBJECT: Resolution to approve Term Contract 63002 – Class A Biosolids Management Services

Enclosed is the resolution authorizing execution of Term Contract 63002 (PeopleSoft Contract ID 1000025273) with Lystek International for the production and management of Class A biosolids. The Contract has an initial contract not to exceed amount of \$16,400,000 for five years and \$6,400,000 for two optional extension years, for a total not to exceed amount of \$22,800,000 and total contract duration of seven years, commencing on July 1, 2022, and ending on June 30, 2029.

This contract was awarded pursuant to a solicitation (Sourcing Event 0000006728) conducted on March 29, 2022 by the Office of Contract Administration (OCA).¹ The solicitation resulted in the award to Lystek International Limited as the lowest responsive bidder.

Description of Services

The City's two wastewater treatment facilities produce approximately 60,000 wet tons of biosolids. Term Contract 63002 entails the conversion and management of the City's biosolids into either a liquid fertilizer or a compost which meets the federal requirements for Class A biosolids. Biosolids are then transported to one of two facilities outside of San Francisco through a separate contract. Once the biosolids are converted into a liquid fertilizer or a compost, the contractor is responsible for the material's subsequent use. The not to exceed amount for this contract is based on the tonnage capacity requested at the facilities by the City multiplied by cost per ton over the contract's term.

This contract represents a vital management practice for biosolids produced by City's wastewater treatment facilities. Without this contract, the City would be in danger of not having adequate contracted capacity to manage its biosolids and would not have a way to manage its biosolids in a manner compliant with SB 1383.

If you have any questions or require additional information, please contact Evan Magante on my team at 415-487-5267.

Enclosures:

1. Contract 1000025273 (Lystek International Limited)
2. SFETH Form 126(f)2 - Contract 1000025273 (Lystek International Limited)
3. SFETH Form 126(f)4 - Contract 1000025273 (Lystek International Limited)
4. Resolution - Contract 1000025273 (Lystek International Limited)

¹ As of 2021, over 40 percent of the City's biosolids were managed through a contract with Lystek International under Term Contract 63001. Term Contract 63001 has reached the end of its allowable term and could not be renewed. As such, OCA was required to conduct a new solicitation by which to award a new contract for these services.

**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
Lystek International Limited
TC 63002**

AGREEMENT

This Agreement is made this 1st day of July, 2022, in the City and County of San Francisco (“City”), State of California, by and between Lystek International Limited (“Contractor”) and City.

Recitals

WHEREAS, the San Francisco Public Utilities Commission Wastewater Enterprise (“Department”) wishes to procure Class-A Biosolids Production and Management Services (“Services”) from Contractor; and

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

WHEREAS, Contractor was competitively selected pursuant to Sourcing Event ID 0000006728; and

WHEREAS, this is a contract for Services and the Local Business Entity (“LBE”) subcontracting participation requirement for the Services has been waived; and

WHEREAS, approval for the Agreement was obtained on [insert date of Civil Service Commission action or DHR approval date if under \$100K] from the [Civil Service Commission or Department of Human Resources on behalf of the Civil Service Commission] under PSC number [insert PSC number] in the amount of [insert Dollar Amount] for the period commencing [Insert Start Date] and ending [Insert End Date]; and

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

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

1.2 “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or

the Director's designated agent, hereinafter referred to as "Purchasing" and all City Departments authorized to utilize this Agreement for the purpose of securing the Services described herein.

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

1.4 "CMD" means the Contract Monitoring Division of the City.

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

1.6 "Contractor" means Lystek International Limited.

1.7 "Deliverables" means Contractor's work product resulting from the Services provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product (if any) described in Appendix A.

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

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

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

Article 2 Term of the Agreement

2.1 The term of this Agreement shall be five (5) years, commencing on July 1, 2022 and expiring on June 30, 2027, unless earlier terminated as otherwise provided herein.

2.2 **Options.** The City has the option to renew the Agreement for a period of up to two (2) additional years, for a total contract term of seven (7) years. The City may extend this Agreement beyond the expiration date by exercising an option mutually agreed by the City and Contractor and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

3.3 Compensation.

3.3.1 Calculation of Charges. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the City, in its sole discretion, concludes has been satisfactorily performed. In no event shall the amount of this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies and no ".00"]. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any services covered by this Agreement.

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until City approves the Services delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to cure Services provided in an unsatisfactory manner, even if the unsatisfactory character may have been apparent or detected at the time such payment was made. Services delivered pursuant to this Agreement that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

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

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

3.3.5 **Reserved (LBE Payment and Utilization Tracking System).**

3.3.6 **Getting paid by the City for Services.**

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

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

3.3.7 **Reserved (Grant Funded Contracts).**

3.3.8 **Payment Terms.**

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

(b) **Reserved (Payment Discount Terms).**

3.4 **Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to the Services. Contractor will permit City to audit, examine, copy, 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, unless required for a longer duration due to Federal, State, or local requirements of which the City will notify Contractor in writing, after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6 **Payment of Prevailing Wages**^[EMI]

3.6.1 **Covered Services.** Services to be performed by Contractor under this Agreement may involve the performance of trade work covered by the provisions of Section 6.22(e) [Prevailing Wages] of the Administrative Code or Section 21C [Miscellaneous Prevailing Wage Requirements] (collectively, “Covered Services”). The provisions of Section 6.22(e) and 21C of the Administrative Code are incorporated as provisions of this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

3.6.2 **Wage Rates.** The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Copies of the prevailing wage rates as fixed and determined by the Board of Supervisors are available from the Office of Labor Standards and Enforcement (“OLSE”) and on the Internet at <http://www.dir.ca.gov/DLSR/PWD> and <http://sfgov.org/olse/prevailing-wage>. Contractor agrees that it shall pay not less than the prevailing wage rates, as fixed and determined by the Board, to all workers employed by Contractor who perform Covered Services under this Agreement.

3.6.3 **Subcontract Requirements.** As required by Section 6.22(e)(5) of the Administrative Code, Contractor shall insert in every subcontract or other arrangement, which it may make for the performance of Covered Services under this Agreement, a provision that said subcontractor shall pay to all persons performing labor in connection with Covered Services under said subcontract or other arrangement not less than the highest general prevailing rate of wages as fixed and determined by the Board of Supervisors for such labor or services.

3.6.4 **Posted Notices.** As required by Section 1771.4 of the California Labor Code, Contractor shall post job site notices prescribed by the California Department of Industrial Relations (“DIR”) at all job sites where services covered by Chapter 6.22 are to be performed.

3.6.5 **Payroll Records.** As required by Section 6.22(e)(6) of the Administrative Code and Section 1776 of the California Labor Code, Contractor shall keep or cause to be kept complete and accurate payroll records for all trade workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided

Covered Services on the project, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall undertake the performance of any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by the City and its authorized representatives and the DIR.

3.6.6 Certified Payrolls. Certified payrolls shall be prepared pursuant to Administrative Code Section 6.22(e)(6) and California Labor Code Section 1776 for the period involved for all employees, including those of subcontractors, who performed labor in connection with Covered Services. Contractor and each subcontractor performing Covered Services shall submit certified payrolls to the City and to the DIR electronically. Contractor shall submit payrolls to the City via the reporting system selected by the City. The DIR will specify how to submit certified payrolls to it. The City will provide basic training in the use of the reporting system at a scheduled training session. Contractor and all subcontractors that will perform Covered Services must attend the training session. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

3.6.7 Compliance Monitoring. Covered Services to be performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and /or the OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements, and agrees to take the specific steps and actions as required by Section 6.22(e)(7) of the Administrative Code. Steps and actions include but are not limited to requirements that: (i) the Contractor will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on Public Works Contractor by the Charter and Chapter 6 of the San Francisco Administrative Code; (ii) the Contractor agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (iii) the contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iv) the Contractor shall prominently post at each job-site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (v) that the Labor Standards Enforcement Officer may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the Charter and this Chapter on Public Works Contractors. Failure to comply with these requirements may result in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

3.6.8 Remedies. Should Contractor, or any subcontractor who shall undertake the performance of any Covered Services, fail or neglect to pay to the persons who perform

Covered Services under this Contract, subcontract or other arrangement for the Covered Services, the general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in Administrative Code Section 6.22 (e) and/or California Labor Code Section 1775. The City, when certifying any payment which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

3.7 Reserved (Displaced Worker Protection Act). This Agreement is for building maintenance services, more than \$25,000 and for at least a 3-month term, employees must work at least 15 hours per week. Contractors are hereby notified of the requirements to comply with the Displaced Worker Protection Act (DWPA, Article 33C of the San Francisco Police Code). The DWPA applies to any contract (services contract) to be performed with the City and County of San Francisco (City), entered into between City and any individual, proprietorship, partnership, joint venture, corporation, Limited Liability Company, trust, association or other entity with 25 or more employees. Employee for the purpose of the DWPA includes any service employee of the contractor or its subcontractor(s) who works at least 15 hours per week and whose primary place of employment is in the City but does not include: 1) managerial, supervisory or confidential employees as defined by the Fair Labor Standards Act; or 2) employees who do not possess or have not maintained a required occupational license.

3.7.1 Transition Employment Period

A. Where the contracting City department has given notice that a service contract has been terminated or ended, or where a service contractor has given notice of such termination, upon giving or receiving such notice, as the case may be, the terminated or ending contractor shall, within ten days thereafter, provide to the successor contractor, the name, date of hire, and employment occupation classification of each employee employed at the site or sites covered by the prospective contractor at the time of contract termination (employment information). This provision shall also apply to the subcontractors of the terminated contractor. If the terminated contractor does not know the identity of the successor contractor, if any, by the time of the contract termination notice, the terminated contractor shall obtain such information from the contracting City department at such time. Where a subcontractor of a service contractor has been terminated prior to the termination of the service contract, the terminated subcontractor shall be deemed a terminated contractor for purposes of the DWPA.

B. A successor contractor shall retain, for a 90-day transition employment period, employees who have been employed by the terminated contractor or its subcontractors, if any, for the preceding eight months or longer at the site or sites covered by the contract.

C. If at any time a successor contractor determines that fewer employees are required to perform the new service contract than were required by the terminated contractor (and subcontractors, if any), the successor contractor shall retain employees by seniority within job classifications.

D. During such 90-day period, the successor contractor (or subcontractor, where applicable) shall maintain a preferential hiring list of eligible covered employees not retained by the successor contractor (or subcontractor) from which the successor contractor (or subcontractor) shall hire additional employees.

E. Except as provided in subsection C of this section, during such 90-day period, the successor contractor (or subcontractor, where applicable) shall not discharge without cause an employee retained pursuant to the DWPA. Cause for this purpose shall include, but not be limited to, the employee's conduct while in the employ of the terminated contractor or subcontractor that contributed to any decision to terminate the contract or subcontract for fraud or poor performance, excluding permissible union-related activity.

F. At the end of such 90-day period, a successor public sector contractor (or subcontractor, where applicable) shall perform a written performance evaluation for each employee retained pursuant to the DWPA. If the employee's performance during such 90-day period is satisfactory, the successor public sector contractor (or subcontractor) shall offer the employee continued employment under the terms and conditions established by the public sector successor contractor (or subcontractor) or as required by law.

G. Contractors must include a provision in all subcontracts requiring subcontractors to comply with the obligations imposed by the DWPA.

3.7.2 Enforcement

A. An employee who has been discharged in violation of the DWPA by a successor contractor or its subcontractor may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, against the successor contractor and, where applicable, its subcontractor, and may be awarded back pay, including the value of benefits, for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

1. The average regular rate of pay received by the employee during the last three years of the employee's employment in the same occupation classification; or
2. The final regular rate received by the employee.

B. If the employee is the prevailing party in any such legal action, the Court shall award reasonable attorney's fees and costs as part of the costs recoverable.

3.7.3 **Successor's Prior Employees.** A successor contractor or subcontractor may replace an employee retained pursuant to the DWPA with a person employed by the contractor or subcontractor continuously for eight months prior to the commencement of the successor service contract or subcontract in a capacity similar to that proposed under the successor service contract or subcontract, but only if the existing employee of the successor contractor or subcontractor would otherwise be laid off work as a result of the award of the successor contract.

Article 4 Services

4.1 Reserved (Primary and Secondary Contractors).

4.2 **Term Agreement – Indefinite Quantities.** This is a term, indefinite quantities Agreement to supply the Services identified in this Agreement. Unless otherwise specified herein, Services will be required in quantities and at times as ordered during the period of the Agreement. Estimated Services are approximate only. City, in its sole discretion, may purchase any greater or lesser quantity. Purchasing may also make purchases from other suppliers when Purchasing determines, in its sole discretion, that the City has an immediate need for the Services

or that it is not practical to purchase against this Agreement. City will not honor minimum order charges under this Agreement.

4.3 Personnel

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

4.3.2 **Contractor Vaccination Policy.**

(a) Contractor acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency ("Emergency Declaration"), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator ("Contractor Vaccination Policy"), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>.

(b) A Contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the Contractor or Subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a City owned, leased, or controlled facility. Such agreements include, but are not limited to, professional services contracts, general services contracts, public works contracts, and grants. Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. Contract does not include an agreement with a state or federal governmental entity or agreements that do not involve the City paying or receiving funds.

(c) In accordance with the Contractor Vaccination Policy, Contractor agrees that:

(i) Where applicable, Contractor shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and ensure such Covered Employees are either fully vaccinated for COVID-19 or obtain from Contractor an exemption based on medical or religious grounds; and

(ii) If Contractor grants Covered Employees an exemption based on medical or religious grounds, Contractor will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form ("Exemptions Form"), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to "Exemptions" to download the form).

4.4 **Reserved.**

4.5 **Services.**

4.5.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in Appendix A. Officers and employees of the City are not authorized to

request, and the City is not required to reimburse the Contractor for, Services beyond the Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, “Modification of this Agreement.”

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

4.5.3 **Awarded Services.** If, during the term of the Agreement, a contract service is determined to be unacceptable for a particular department, and such is documented by Purchasing, it is understood and agreed that the service will be canceled and removed from the Agreement without penalty to City. City’s sole obligation to Contractor is payment for Services performed prior to the cancellation date. City shall give Contractor ten days’ notice prior to any cancellation. City will contract for the required service from any source and in the manner as determined by Purchasing. Contractor must notify Purchasing in writing, which can include email, certified mail, registered mail, or other trackable mail, 30 days in advance of any changes in the Services required in the Agreement. Any changes made without the approval of Purchasing will constitute a Default.

4.5.4 Independent Contractor; **Payment of Employment Taxes and Other Expenses**

(a) Independent Contractor. For the purposes of this Section 4.5, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it delivers the Services required by this Agreement and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing any of the obligations pursuant to this Agreement, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and

not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

(b) **Payment of Employment Taxes and Other Expenses.**

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past Services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.5 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

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

4.7 **Reserved (Liquidated Damages).**

4.8 **Reserved (Performance Bond).**

4.9 **Reserved (Fidelity Bond).**

4.10 **Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver Services using all modes of transportation available. Contractor shall provide a 24-hour emergency telephone number of a company representative who is able to receive and process orders for immediate delivery or will call in the event of an emergency. In addition, the Contractor shall charge fair and competitive prices for Services ordered during an emergency and not covered under the awarded Agreement.

4.11 **Usage Reports by Contractor.**

4.11.1 Each year, no later than February 15, Contractor shall prepare and submit to City an electronic report of the total Services rendered under this Agreement during the preceding calendar year (January 1 – December 31). The report must list by City department the following: (1) all Services ordered (“Order”) (2) all Services delivered; (3) the date on which each Order was placed; (4) the date on which each Order was delivered; and (5) total quantity and unit price of the Services contained within each Order. Contractor must also furnish a separate similar report for the total of all items Services ordered by City which are not part of this Agreement. Contractor shall email reports to OCAVendor.Reports@sfgov.org.

4.11.2 Any report files larger than 10MB must be submitted in electronic format on USB drive and mailed to the address shown below with the term Agreement number and “Annual Supplier Reporting” clearly marked on the envelope/packaging. Contractor shall mail the reports to:

OCA Supplier Reporting
Re: Term Contract No. 63002
City and County of San Francisco
Office of Contract Administration – Purchasing
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

4.11.3 City reserves the right to terminate this Agreement if information requested from and submitted by Contractor fails to satisfy City and/or Contractor is unable to provide the information and/or documentation within the period requested.

Article 5 Insurance and Indemnity

5.1 **Insurance.**

5.1.1 **Required Coverages.** Without in any way limiting Contractor’s liability pursuant to the “Indemnification” section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

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

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

(d) Reserved (Professional Liability Insurance).

(e) Reserved (Technology Errors and Omissions Liability Insurance).

(f) Reserved (Cyber and Privacy Insurance).

(g) Pollution Liability Insurance applicable to Contractor’s activities and responsibilities under this Agreement with limits not less than \$1,000,000 each occurrence combined single limit, including coverage for on-site third party claims for bodily injury and property damage.

5.1.2 Additional Insured Endorsements

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

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

(c) The Commercial Automobile Liability Insurance policy must be endorsed to include (i) Auto Pollution Additional Insured Endorsement naming as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees; and (ii) Form MCS-90 for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980.

5.1.3 Waiver of Subrogation Endorsements

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

5.1.4 Primary Insurance Endorsements

(a) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) The Pollution Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.5 Other Insurance Requirements

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

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

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

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

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

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

5.2 Indemnification.

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; (v) breach of contract; or (vi) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable

to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (vi) above) arises directly or indirectly from Contractor’s performance of this Agreement, including, but not limited to, Contractor’s use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either’s agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City’s costs of investigating any claims against the City.

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

5.2.3 Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys’ fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor’s Services pursuant to this Agreement.

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY’S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, “PAYMENT,” OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

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

6.3 **Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor’s acts or omissions.

Article 7 Payment of Taxes

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest

taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Possessory Interest Taxes. Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply.

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

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

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

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

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

Article 8 Termination and Default

8.1 Termination for Convenience

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

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

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

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

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

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

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

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

8.1.3 Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth the cost of all Services delivered prior to City's notice of termination. City's payment obligation pursuant to this Subsection 8.1.3 shall be subject to Section 3.3.2 of this Agreement.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically listed in Section 8.1.2. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services rendered by Contractor under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.2.

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

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

8.2 Termination for Default; Remedies.

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

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

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

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

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

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

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

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

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

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

8.3 Non-Waiver of Rights.

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

8.4 Rights and Duties upon Termination or Expiration.

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

3.3.2	Payment Limited to Satisfactory Services		9.2	Works for Hire
3.3.7	Reserved (Grant Funded Contracts)		11.6	Dispute Resolution Procedure
3.4	Audit and Inspection of Records		11.7	Agreement Made in California; Venue
3.5	Submitting False Claims		11.8	Construction
Article 5	Insurance and Indemnity		11.9	Entire Agreement
6.1	Liability of City		11.10	Compliance with Laws
6.3	Liability for Incidental and Consequential Damages		11.11	Severability
Article 7	Payment of Taxes		Article 12	Department Specific Terms
8.1.6	Payment Obligation		Article 13	Data and Security
9.1	Ownership of Results		Appendix D	Reserved (Business Associate Agreement)

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this

Agreement shall be of no further force or effect. 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.

8.5 Relief for Force Majeure/Uncontrollable Circumstances; Change in Law.

Neither Party shall be liable to the other Party for breach or for failure or delay in the performance of its obligations hereunder caused by any act or occurrence beyond its reasonable control, including, but not limited to: fires; floods; strikes (except any strikes involving a Party's personnel); a change in Federal, State, or local law or ordinance; orders or judgments of any Federal, State or local court, administrative agency or governmental body; change in permit conditions or requirements; accidents; extreme weather conditions including, for example, hurricanes, tornadoes, unusually high amounts of precipitation, unusual extremes of temperature or wind, or unusually extended periods of adverse weather conditions; acts of war, aggression or terrorism (foreign or domestic); equipment failure (other than due to the inadequate maintenance thereof); and acts of God. It is specifically understood that, without limitation, none of the following acts, events or circumstances shall constitute an act or occurrence beyond a Party's reasonable control: (i) reasonably anticipated weather conditions normal for the region in which the work is performed or (ii) any failure to pay any sums in accordance with the terms of this Contract. Whenever the provisions of this Section are believed to apply, the Party relying thereon shall give prompt notice to the other Party of the circumstances, the basis for applicability of this Section and the time required to cure such breach or delay. Contractor shall promptly provide notice of the need, if any, for additional compensation or for renegotiation of terms in order to mitigate the effects of such event or to comply with a change in law or regulation or interpretation thereof. Contractor shall be entitled to additional time and compensation if such event delays performance into a season different from that assumed when this Contract was executed. Contractor and City shall use reasonable best efforts to agree on appropriate mitigating actions under the circumstances.

Article 9 Rights In Deliverables

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

9.2 **Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any

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

Article 10 Additional Requirements Incorporated by Reference

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

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

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

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

10.5 Nondiscrimination Requirements

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

comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

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

10.8 Health Care Accountability Ordinance. If Administrative Code Chapter 12Q applies to this Agreement, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.9 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

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

purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

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

10.12 Reserved (Slavery Era Disclosure).

10.13 Reserved (Working with Minors).

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

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

10.15 **Public Access to Nonprofit Records and Meetings.** If Contractor is a non-profit organization; provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries); and receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein; and receives a cumulative total per year of at least \$250,000 in City or City-administered funds and as defined in Chapter 12L of the San Francisco Administrative Code, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

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

10.17 **Distribution of Beverages and Water.**

10.17.1 **Sugar-Sweetened Beverage Prohibition.** Contractor agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

10.17.2 **Packaged Water Prohibition.** Contractor agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

10.18 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.^[TM2]^[EM3]

10.18.1 **Reserved.**

10.19 **Reserved (Preservative Treated Wood Products).**

10.20 **Reserved (Sweat Free Procurement).**

10.21 **Environment Code Chapter 5, Resource Conservation Ordinance.**

10.21.1 **Reserved (Printing Services and/or Writing Paper Products).**

10.21.2 **Reserved (Collection of Recyclable Materials).**

10.22 **Reserved (Prop J Approval).**

10.23 **Use of City Opinion.** Contractor shall not quote, paraphrase, or otherwise refer to or use any opinion of City, its officers or agents, regarding Contractor or Contractor's performance under this Agreement without prior written permission of Purchasing.

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

To City:	Director of Purchasing City and County of San Francisco Office of Contract Administration Purchasing Division City Hall, Room 430 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4685 Email: OCA@sfgov.org Phone: (415) 554-6743 Fax: (415) 554-6717
To Contractor:	James Dunbar General Manager Lystek International Limited 1014 Chadbourne Road Fairfield, CA 94534 Email: jdunbar@lystek.com Phone: (888) 501-6508

Any notice of default must be sent by registered mail or other trackable overnight mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

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

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

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

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement.

11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of Services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to

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

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

11.6.3 Health and Human Service Contract Dispute Resolution Procedure. If this Agreement is with a health and human services nonprofit, the Parties shall resolve disputes that have not been resolved administratively by other departmental remedies in accordance with the Dispute Resolution Procedure set forth in this Agreement and incorporated herein by this reference.

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

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

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

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

11.11 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as

to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

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

11.13 Order of Precedence. Contractor agrees to perform the Services described herein in accordance with the terms and conditions of this Agreement. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's bid and/or proposal, and Contractor's printed terms, respectively.

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

11.15 Cooperative Agreement. Contractor agrees that during the term of this Agreement and any authorized extension, the Director of Purchasing may allow other public agencies or non-profits made up of multiple public agencies to utilize this Agreement to obtain some or all of the Services to be provided by Contractor under the same terms and conditions as the City.

Article 12 Department Specific Terms

12.1 Third Party Beneficiaries.

No third parties are intended by the Parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either Party by any person who is not a party hereto.

12.2 Exclusion Lists and Employee Verification.

12.2.1 Contractor acknowledges that some or all of the Services that Contractor furnishes to City under this Agreement may be included, directly or indirectly, in whole or in part, in claims submitted by City to Federal or State health care programs. By executing this Agreement Contractor certifies that it is not currently, and shall not during the term of this Agreement become, excluded, directed to be excluded, suspended, ineligible or otherwise sanctioned from participation in any Federal or State assistance programs. Contractor shall notify City, as provided in Section 11.1 ("Notices to the Parties"), within thirty (30) days of any such exclusion, suspension, ineligibility, or other sanction. This is a material term of this

Agreement. Contractor agrees to indemnify and hold harmless City and City's officers, directors, employees, agents, successors and permitted assigns from and against any and all (including but not limited to Federal, State, or third party) civil monetary penalties, assessments, repayment obligations, losses, damages, settlement agreements and expenses (including reasonable attorneys' fees) arising from the exclusion, suspension, ineligibility, or other sanction of Contractor and/or Contractor's workforce (including those who oversee Contractor's workforce, supervisors and governing body members) from participation in any Federal or State assistance program.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

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

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

13.2 Reserved (Payment Card Industry ("PCI") Requirements).

13.3 Business Associate Agreement.

The Parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is required to comply with the HIPAA Privacy Rule governing the access, use, disclosure, transmission, and storage of protected health information (PHI) and the Security Rule under the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act").

The Parties acknowledge that CONTRACTOR will:

1. Do **at least one** or more of the following:
 - A. Create, receive, maintain, or transmit PHI for or on behalf of City (including storage of PHI, digital or hard copy, even if Contractor does not view the PHI or only does so on a random or infrequent basis); or
 - B. Receive PHI, or access to PHI, from City or another Business Associate of City, as part of providing Services to or for City including legal,

actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial; or

C. Transmit PHI data for City and require access on a regular basis to such PHI. (Such as health information exchanges (HIEs), e-prescribing gateways, or electronic health record vendors)

For purposes of this Agreement, Contractor is a Business Associate of CITY, as defined under HIPAA. Contractor must comply with and complete the Business Associate Agreement and attestations attached to this Agreement.

2. **NOT do any of the activities listed above in subsection 1;**

Contractor is not a Business Associate of CITY. A Business Associate Agreement and Attestations are not required for the purposes of this Agreement.

13.4 **Protected Health Information.** Where applicable, Contractor, all subcontractors, all agents and employees of Contractor and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health information, if any, disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Agreement. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of protected health information given to Contractor or its subcontractors or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement.

13.5 **Management of City Data and Confidential Information**

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

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

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

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

Article 14 MacBride And Signature

14.1 MacBride Principles -Northern Ireland.

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

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

CITY

CONTRACTOR

Recommended by:

Lystek International Limited

Linda Repola
Supervising Purchaser
Office of Contract Administration

James Dunbar
General Manager

City Supplier Number: 0000016015

Approved as to Form:

David Chiu
City Attorney

By: _____
Tyson Arbuthnot
Deputy City Attorney

Approved:

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

A:	Scope of Services
B:	Calculation of Charges
C:	Regulatory and Compliance Requirements
D:	Reserved (BAA)

Appendix A Scope of Work

A. Services to be Provided

1. Contractor shall provide services to produce Class-A biosolids from biosolids from the Southeast and Oceanside Treatment Plants. SFPUC generates approximately 55,000 to 65,000 wet tons of anaerobically digested, Class-B biosolids [AT(4)]per year.
2. The SFPUC's Biosolids Coordinator will determine the daily quantities of biosolids to be delivered to the Contractor's facilities. If multiple facilities are provided, the SFPUC Biosolids Coordinator will ensure that the annual quantity of biosolids delivered to each site is in keeping with the annual quantity for each site proposed by the Contractor.
3. Contractor must have an operational facility capable of producing a useable Class-A biosolids product. The Class-A biosolids product should meet Class-A pathogen standards, as specified in 40 CFR 503. Biosolids products should be suitable for use in agricultural or horticultural markets in Northern California.
4. No minimum tonnage is guaranteed to any Contractor's facility via this Contract.
5. Distribution of the biosolids products created through this Contract will be the responsibility of the Contractor. Biosolids products shall be beneficially used and not sent to a landfill for disposal or use as alternative daily cover.
6. SFPUC staff may, at any time during the Contract period, request any available analysis, data, or reports of the final product quality from the Contractor. The data could consist of any analysis, data, or reports required by USEPA, Regional Water Quality Control Board, CalRecycle Permits, Regional Air Quality Management District and the applicable County Agency. The data reports must be provided within two calendar weeks of the request date, at no charge to the SFPUC.
7. The Contractor shall produce monthly and annual usage reports. These reports should include, at a minimum, the dates and tonnages of biosolids deliveries, the number of truck loads received, and quantity and price of biosolids products sold which were derived from SFPUC biosolids.
8. The SFPUC shall provide anaerobically digested, dewatered biosolids that are as free of grit and screenings as possible, and that have been dewatered through mechanical equipment. For reference, in 2021 Oceanside biosolids were an average of 21.3% total solids and Southeast biosolids solids were an average of 23.5% total solids. The SFPUC makes no guarantee as to the percent total solids of the biosolids. |

[AT(5)]EM6

9. The SFPUC uses a Biosolids Management System to oversee its biosolids program. The policy of this management system is for the SFPUC, "To promote

the beneficial and cost-effective use of biosolids while preventing any negative impacts, maximizing the recycling of resources, and protecting public health and the environment.” The Contractor’s actions shall be consistent with the SFPUC’s Biosolids Management System policy.

B. Contractor’s Facility(ies)

1. The Contractor’s facility(ies) must have a minimum annual capacity of 35,000 wet tons.
2. The Contractor’s facility(ies) must be located no more than 175 miles (one-way distance) from the Southeast Treatment Plant, located at 750 Phelps Street, San Francisco.
3. The Contractor’s facility(ies) must have all required permits to perform and provide the services as required under this Contract. All services provided as a part of this Contract must comply fully with all applicable Federal, State, and Local laws and requirements including those set forth by CalRecycle, the California Air Resources Board, Bay Area Air Quality Management District, and the California Regional Water Quality Control Boards.
4. Facilities under this Contract shall be open and available for delivery of biosolids at least 8 hours per day, seven days per week. The facility must have a start time at least as early as 8am.
5. Facilities must be fully operational and able to receive biosolids upon award of the Contract, anticipated to be May 15, 2022.
6. If feasible based on the type of biosolids product produced, the SFPUC may request up to two (2) backhauls of finished product from the Contractor per year. Such product would be given to the SFPUC free of charge and hauled by the SFPUC’s contracted trucking company to a destination specified by the SFPUC.
7. The facilities proposed must not cause a nuisance to nearby residences, including excessive dust, odor and vectors.
8. Site visits and inspections may be conducted unannounced by City staff. Access to City staff and agents cannot be unreasonably restricted.

C. Requirements for Class-A Biosolids

1. The Contractor will not be responsible for creating a product which meets the limits in Table 3 of 40 CFR 503.13 if the biosolids they receive from the SFPUC do not meet these standards. If the Contractor is provided biosolids which meet the limits in Table 3 of 40 CFR 503.13 and the VAR requirements in 40 CFR 503.33, they must produce a Class A EQ biosolids products as defined by the following federal regulations:
 - a. Meet the pollutant limits as defined in Tables 1 and 3 of 40 CFR Part 503.13.
 - b. Meet the Class-A pathogen density levels defined in 40 CFR Part 503.32.

- c. Meet one of the attraction reduction (VAR) options as defined in 40 CFR Part 503.33. VAR shall be met concurrent with or after the pathogen reduction process used by the Proposer to meet Class A pathogen density levels for any product.
 - d. Maintain records as required in 40 CFR 503.17.
2. The Contractor shall ensure all applicable state and local regulations for the production and use of biosolids products are adhered to. This includes but is not limited to the specifications stated in this Contract. [LR7]
 3. The SFPUC shall provide appropriate quality testing results for the SFPUC's biosolids to the Contractor for the metals outlined in 40 CFR Part 503.13 and documentation of how biosolids meet VAR requirements in 40 CFR 503.33.

D. Logistics and Document Compliance

Information to be provided by Contractor upon award.

1. A Closure Plan and Emergency Plan for responding to material spills.
2. A Health and Safety Plan. The plan must be maintained and practiced, include training, reporting procedures and regular reviews and updates of Contractor's facilities.
3. A Public Outreach Policy or Community Response Plan which at a minimum identifies responsible personnel, response time and course of action taken when a complaint is received from a member of the public.
4. All required permits to provide the services and facilities. Copies of current permits must be submitted including CalRecycle, Water Board, and Air Board permits if proposed facility(ies) require such permits. The Contractor should use the table in Exhibit 1, Appendix A and list all permit numbers.
5. A summary of violations in the last (3) years, if any, in the State of California attributable to handling and disposing grit and/or biosolids.

Appendix B
Calculation of Charges

SITE	MINIMUM CAPACITY	PRICE
Lystek Fairfield OMRC	17,500 wet tons	\$111.73 / wet ton
SynaGro Central Valley Compost (CVC)	17,500 wet tons	\$69.44 / wet ton

Appendix C
Regulatory and Compliance Requirements

1. Reserved (Delivery).

2. Price.

Only prices that appear on Appendix B will be considered. No other pages with prices or attached price lists and/or catalog prices will be considered. Prices shall be exclusive of any Federal, State, local sales or use tax. In the event of a discrepancy between the unit price and the extended price, the unit price will prevail.

3. Price Adjustment.

A. When to request a Price Adjustment:

1. Requests for Price Adjustments must be made in writing to City.
2. Contractor may request Price Adjustments no sooner than twelve (12) months from the Bid Due Date of April 18, 2022.
3. Only (1) one Price Adjustment shall be approved in any twelve (12) month period.
4. If approved, Price Adjustments will be implemented with an Amendment to this Agreement and shall be effective upon execution of the Amendment.

B. How Price Adjustments will be Calculated:

Requests for price adjustments under this Agreement must be supported by the U.S. Department of Labor's most recently published, **non-preliminary** Consumer Price Index (CPI) available at the time of Contractor's Price Adjustment request. The requested rate change shall be calculated from the last requested Price Adjustment or, if no Price Adjustment has previously been requested, from the Bid Due Date.

CPI for All Urban Consumers (CPI-U)

Series ID: CUURS49BSA0 (Not Seasonally Adjusted)

Series Title: All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted

Area: San Francisco-Oakland-Hayward, CA

Item: All items

Website: www.bls.gov/data/

4. Additional Services.

If, in the satisfaction of governmental interests it is necessary to purchase additional Services from Contractor, additional Services may be added to this Agreement by mutual agreement of the Parties in accordance with Chapter 21 of the San Francisco Administrative Code.

5. Regulatory Requirements.

- A. Contractor's facility(ies) must be permitted by applicable regulatory agencies (e.g. CalRecycle, Regional Water Quality Control Board) to receive and accept

the characterized material. The site must have all required permits to perform and provide the services as required under this Contract. All items covered under this Contract must comply fully with all specifications stated herein as well as all applicable Federal, State, and local laws and requirements (e.g. California Air Quality Resources Board Permits, Regional Water Quality Control Board Permits.) The latest versions of all specifications apply to this contract. The Contractor shall use the table in Appendix A – Exhibit 1 and list all permit numbers upon contract award. There is extra space to enter any additional required site permits that are not listed in the table. Contractor shall submit Appendix A – Exhibit 1 with copies of any and all permits currently held for each facility upon contract award.

- B. Permits shall accommodate the handling of the minimum quantity of biosolids per year specified herein, throughout the entire term of the contract. All costs associated with obtaining the required permits shall be borne by the Contractor and shall be considered part of the proposed compensation for services.
- C. Contractor shall produce monthly and annual usage reports. These reports should include, at a minimum, the dates and tonnages of biosolids deliveries, the number of truck loads received, quantity and price of biosolids products sold which were derived from SFPUC biosolids.

6. Other Requirements.

- A. **Permits/Licenses:** Contractor must have all requisite permits, licenses, and professional credentials necessary to perform the services as specified. The Contractor must comply with all OSHA regulations for worker safety.
- B. **Support:** Contractor shall be responsible for providing technical support and assistance to the City through Contractor's own personnel, equipment and facilities as well as through manufacturer's technical representatives. As part of this technical support and assistance, the Contractor shall provide personnel with in-depth technical knowledge of the products the Contractor is providing under this Agreement, to answer questions and offer any assistance required by City personnel, during City business hours (8:00 A.M. – 5:00 P.M.).
- C. **Incidental Costs:** All costs associated with obtaining any required permits shall be borne by the Contractor and shall be considered part of the proposed compensation for services.

Appendix D
Reserved (BAA)



DATE: May 13, 2022
TO: Angela Calvillo, Clerk of the Board
FROM: Sailaja Kurella, Acting Director of Office of Contract Administration (OCA) and Purchaser
SUBJECT: Resolution to approve Term Contract 63002 – Class A Biosolids Management Services

Enclosed is the resolution authorizing execution of Term Contract 63002 (PeopleSoft Contract ID 1000025273) with Lystek International for the production and management of Class A biosolids. The Contract has an initial contract not to exceed amount of \$16,400,000 for five years and \$6,400,000 for two optional extension years, for a total not to exceed amount of \$22,400,000 and total contract duration of seven years, commencing on July 1, 2022, and ending on June 30, 2029.

This contract was awarded pursuant to a solicitation (Sourcing Event 0000006728) conducted on March 29, 2022 by the Office of Contract Administration (OCA).¹ The solicitation resulted in the award to Lystek International Limited as the lowest responsive bidder.

Description of Services

The City's two wastewater treatment facilities produce approximately 60,000 wet tons of biosolids. Term Contract 63002 entails the conversion and management of the City's biosolids into either a liquid fertilizer or a compost which meets the federal requirements for Class A biosolids. Biosolids are then transported to one of two facilities outside of San Francisco through a separate contract. Once the biosolids are converted into a liquid fertilizer or a compost, the contractor is responsible for the material's subsequent use. The not to exceed amount for this contract is based on the tonnage capacity requested at the facilities by the City multiplied by cost per ton over the contract's term.

This contract represents a vital management practice for biosolids produced by City's wastewater treatment facilities. Without this contract, the City would be in danger of not having adequate contracted capacity to manage its biosolids and would not have a way to manage its biosolids in a manner compliant with SB 1383.

If you have any questions or require additional information, please contact Evan Magante on my team at 415-487-5267.

Enclosures:

1. Contract 1000025273 (Lystek International Limited)
2. SFETH Form 126(f)4 - Contract 1000025273 (Lystek International Limited)
3. Resolution - Contract 1000025273 (Lystek International Limited)

¹ As of 2021, over 40 percent of the City's biosolids were managed through a contract with Lystek International under Term Contract 63001. Term Contract 63001 has reached the end of its allowable term and could not be renewed. As such, OCA was required to conduct a new solicitation by which to award a new contract for these services.



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 220600

Bid/RFP #: 0000006728

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Evan Magante	415-487-5267
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
OCA Office of Contract Administration	evan.magante@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR Lystek International Limited	TELEPHONE NUMBER 707-419-0084
STREET ADDRESS (including City, State and Zip Code) 1014 Chadbourne Rd., Fairfield, CA 94534	EMAIL jdunbar@lystek.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER 0000006728	FILE NUMBER (If applicable) 220600
DESCRIPTION OF AMOUNT OF CONTRACT \$22,800,000		
NATURE OF THE CONTRACT (Please describe) <p>The contract entails the conversion and management of the City's biosolids into either a liquid fertilizer or a compost which meets the federal requirements for Class A biosolids. Biosolids are transported to one of two facilities outside of San Francisco through a separate contract. Once the biosolids are converted into a liquid fertilizer or a compost, the contractor is responsible for the material's subsequent use. The NTE amount for this contract is based on the tonnage capacity requested at the facilities by the City multiplied by cost per ton over the contract's term.</p>		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Tomlinson / Lystek	Ron	CEO
2	Flann / Lystek	Christopher	CFO
3	Clement / Lystek	Michael	Other Principal Officer
4	Racey / Synagro West	Pamela	Subcontractor
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
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50			

Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
---	---------------------------



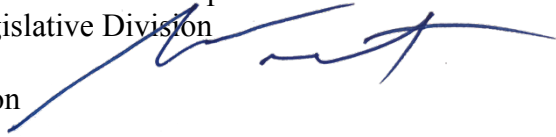
President, Board of Supervisors
District 10

City and County of San
Francisco

SHAMANN WALTON
MEMORANDUM

DATE: June 7, 2022

TO: Angela Calvillo, Clerk of the Board of Supervisors
Board of Supervisors Legislative Division

FROM: President Shamann Walton 

CC: Chair Dean Preston, Government Audit & Oversight
Anne Pearson, Deputy City Attorney
Tom Paulino, Mayor's Office
City Administrator's Office

SUBJECT: **Transferring Items from B&F to GAO**

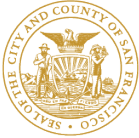
Dear Madam Clerk and Legislative Division Staff,

I am hereby granting the request to transfer the following matters from the Budget & Finance Committee to the Government Audit & Oversight Committee due to the impacted schedule of the Budget & Finance Committee:

- 220544 [Agreement - LAZ Parking California, LLC - Parking Meter Coin and Parking Data Collection Services - Not to Exceed \$50,798,833
- 220554 [Real Property Lease Amendment - Evans Investment Partners, LLC - 750 and 752 Vallejo Street - \$120,792 Annual Base Rent - Estimated \$267,382 Tenant Improvement Cost]
- 220599 [Contract Amendment - Professional Contractor Supply (PCS) - Purchase of Hardware Supplies - \$11,500,000]
- 220600 [Contract - Lystek International Limited - Class A Biosolids Management Services - Not to Exceed \$22,400,000]
- 220601 [Contract - Kemira Water Solutions - Ferric Ferrous Chloride - Not to Exceed \$26,000,000]
- 220602 [Contract - TR International Trading Company - Ferric Ferrous Chloride - Not to Exceed \$28,000,000]
- 220603 [Contract - Univar Solutions USA Inc. - Sodium Hypochlorite - Not to Exceed \$74,000,000]
- 220604 [Contract - Univar Solutions USA Inc. - Sodium Bisulfite - Not to Exceed \$19,000,000]
- 220608 [Multifamily Housing Revenue Bonds - 700-730 Stanyan Street - Not to Exceed \$130,000,000]
- 220645 [Accept and Expend Grant - California Arts Council - Design and Planning for Harvey Milk Plaza - \$1,500,000]
- 220646 [Multifamily Housing Revenue Bonds - Sunnydale HOPE SF Block 3A - Not to

Exceed \$74,000,000]

- 220647 [Multifamily Housing Revenue Bonds - Building E Balboa Reservoir - 11 Frida Kahlo Way - Not to Exceed \$102,000,000]



San Francisco Office of the City Administrator
City Administrator Carmen Chu

Class-A Biosolids Management Services

File 220600; Contract 1000025273

Office of Contract Administration

Board of Supervisors' Government Audit & Oversight Committee

June 16, 2022

Contract Summary

- Proposed contract awarded to Lystek International Limited via competitive solicitation issued on March 29, 2022.
- Contract is to convert the city's biosolids (the nutrient rich solids produced during wastewater treatment) into a fertilizer and manages the subsequent use of the fertilizer.
- Pricing based on "fixed unit price" per wet ton of biosolids for the first 12 months. Pricing can be adjusted annually based on CPI.
- Used exclusively by the SFPUC Wastewater Enterprise.

Previous Contract Expenditures

Year	2018	2019	2020	2021	1/2022 - 5/2022	TOTAL
Wet Tons	11,470	15,081	11,458	25,996	14,373	78,378
Expenses	\$0.72M	\$1.03M	\$0.79M	\$1.85M	\$1.03M	\$5.42M

Projected Expenditures

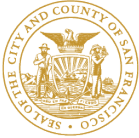
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	TOTAL
Wet Tons	26,020	31,121	31,494	31,872	32,255	32,642	33,033	218,437
Expenses	\$2.54M	\$2.97M	\$3.08M	\$3.18M	\$3.29M	\$3.40M	\$3.52M	\$21.98M

- Increase in wet tonnage due to requirement to comply with Senate Bill 1383 and leverage carbon sequestration benefits of biosolids
- Increase in processing, transport, and labor costs from prior contract

Proposed Contract

- Request approval of resolution, as amended, to execute contract with Lystek International Limited:
 - Initial 5 year duration and NTE of \$16.4M
 - One two- year option to extend, for total NTE of \$22.8M

Thank You



**San Francisco Office of the City Administrator
City Administrator Carmen Chu**

Ferric Ferrous Chloride - Primary

File 22-0601; Contract 1000025263

Ferric Ferrous Chloride - Secondary

File 22-0602; Contract 1000025301

Sodium Hypochlorite

File 22-0603; Contract 1000025302

Sodium Bisulfite

File 22-0604; Contract 1000025303

Office of Contract Administration

Board of Supervisors' Government and Oversight Committee

June 16, 2022

Contract Summary

- Issued competitive solicitation for various chemicals in March 2022
- Chemicals critical for City's wastewater and water treatment processes
- Pricing based unit price per ton or dry pound; varies by chemical
- Due to volatility in market, pricing can be adjusted every 6 months for first two years, annually thereafter, based on PPI
- Used primarily by SFPUC Wastewater and Water Enterprises

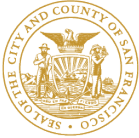
Projected Usage & Expenditures

	Chemical	Estimated Annual Volume	TOTAL NTE
Kemira Water Solutions (<i>File 22-0601</i>)	Ferric and ferrous chloride	1,270,700 gallons	\$26 M
TR International (<i>File 22-0602</i>)	Ferric and ferrous chloride	Secondary contract – no estimate	\$28 M
Univar (<i>File 22-0603</i>)	Sodium hypochlorite	5,683,200 gallons	\$74 M
Univar (<i>File 22-0604</i>)	Sodium bisulfite	1,347,900 gallons	\$19 M

Proposed Contracts

- 1. Kemira Water Solutions – Primary ferric & ferrous chloride:**
 - Initial 3 year duration and NTE of \$ 11.2M
 - Option to extend up to 7 years, for total NTE of \$ 26M
- 2. TR International – Secondary ferric & ferrous chloride:**
 - Initial 3 year duration and NTE of \$ 12M
 - Option to extend up to 7 years, for total NTE of \$ 28M
- 3. Univar – sodium hypochlorite:**
 - Initial 3-year duration and NTE of \$32M
 - Option to extend up to 7 years, for total NTE of \$74M
- 4. Univar – sodium bisulfite:**
 - Initial 3-year duration and NTE of \$8M
 - Option to extend up to 7 years, for total NTE of \$19M

Thank You



**San Francisco Office of the City Administrator
City Administrator Carmen Chu**

Citywide Hardware Supplies

File 22-0599; Contract 1000006825

Office of Contract Administration

Board of Supervisors' Government Audit & Oversight Committee

June 16, 2022

Contract Summary

- Provides a wide variety of hardware supplies to all City Departments.
- Awarded to Professional Contractor's Supply (PCS) via competitive solicitation in May 20 17.
 - Current NTE \$7.5M, ending on July 14, 2025
 - Amended four (4) times
- Pricing based on catalogue discounts ranging from 28% to 44% off.
- Used heavily by all departments.

Projected Expenditures

Total Spend to Date	\$ 6,847,8112
Average Monthly Spend	\$ 122,28 2
Projected Expenditures to J uly 14, 20 25	\$ 4,646,730
Less Current Balance	\$ 652,18 8
Total Additional Funds Needed	\$ 3,994,541
Current NTE	\$ 7,500,000
NEW NTE TOTAL	\$ 11,494,541

- Increase in usage between FY21 and FY22 primarily driven by purchases from MTA and PUC, and heavy usage during the COVID emergency.
- Contract balance insufficient to meet City's business needs through the current contract end date of July 14, 20 25.

Proposed Amendment

- Request approval of resolution to amend contract with Professional Contractor's Supply:
 - Increase NTE by \$4M for total NTE of \$11.5M
 - No change to duration

Thank You

**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
Lystek International Limited
TC 63002**

AGREEMENT

This Agreement is made this 1st day of July, 2022, in the City and County of San Francisco (“City”), State of California, by and between Lystek International Limited (“Contractor”) and City.

Recitals

WHEREAS, the San Francisco Public Utilities Commission Wastewater Enterprise (“Department”) wishes to procure Class-A Biosolids Production and Management Services (“Services”) from Contractor; and

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

WHEREAS, Contractor was competitively selected pursuant to Sourcing Event ID 0000006728; and

WHEREAS, this is a contract for Services and the Local Business Entity (“LBE”) subcontracting participation requirement for the Services has been waived; and

WHEREAS, approval for the Agreement was obtained on [insert date of Civil Service Commission action or DHR approval date if under \$100K] from the [Civil Service Commission or Department of Human Resources on behalf of the Civil Service Commission] under PSC number [insert PSC number] in the amount of [insert Dollar Amount] for the period commencing [Insert Start Date] and ending [Insert End Date]; and

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

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

1.2 “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or

the Director's designated agent, hereinafter referred to as "Purchasing" and all City Departments authorized to utilize this Agreement for the purpose of securing the Services described herein.

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

1.4 "CMD" means the Contract Monitoring Division of the City.

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

1.6 "Contractor" means Lystek International Limited.

1.7 "Deliverables" means Contractor's work product resulting from the Services provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product (if any) described in Appendix A.

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

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

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

Article 2 Term of the Agreement

2.1 The term of this Agreement shall be five (5) years, commencing on July 1, 2022 and expiring on June 30, 2027, unless earlier terminated as otherwise provided herein.

2.2 **Options.** The City has the option to renew the Agreement for a period of up to two (2) additional years, for a total contract term of seven (7) years. The City may extend this Agreement beyond the expiration date by exercising an option mutually agreed by the City and Contractor and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

3.3 Compensation.

3.3.1 Calculation of Charges. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the City, in its sole discretion, concludes has been satisfactorily performed. In no event shall the amount of this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies and no ".00"]. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any services covered by this Agreement.

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until City approves the Services delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to cure Services provided in an unsatisfactory manner, even if the unsatisfactory character may have been apparent or detected at the time such payment was made. Services delivered pursuant to this Agreement that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

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

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

3.3.5 **Reserved (LBE Payment and Utilization Tracking System).**

3.3.6 **Getting paid by the City for Services.**

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

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

3.3.7 **Reserved (Grant Funded Contracts).**

3.3.8 **Payment Terms.**

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

(b) **Reserved (Payment Discount Terms).**

3.4 **Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to the Services. Contractor will permit City to audit, examine, copy, 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, unless required for a longer duration due to Federal, State, or local requirements of which the City will notify Contractor in writing, after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6 **Payment of Prevailing Wages**^[EMI]

3.6.1 **Covered Services.** Services to be performed by Contractor under this Agreement may involve the performance of trade work covered by the provisions of Section 6.22(e) [Prevailing Wages] of the Administrative Code or Section 21C [Miscellaneous Prevailing Wage Requirements] (collectively, “Covered Services”). The provisions of Section 6.22(e) and 21C of the Administrative Code are incorporated as provisions of this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

3.6.2 **Wage Rates.** The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Copies of the prevailing wage rates as fixed and determined by the Board of Supervisors are available from the Office of Labor Standards and Enforcement (“OLSE”) and on the Internet at <http://www.dir.ca.gov/DLSR/PWD> and <http://sfgov.org/olse/prevailing-wage>. Contractor agrees that it shall pay not less than the prevailing wage rates, as fixed and determined by the Board, to all workers employed by Contractor who perform Covered Services under this Agreement.

3.6.3 **Subcontract Requirements.** As required by Section 6.22(e)(5) of the Administrative Code, Contractor shall insert in every subcontract or other arrangement, which it may make for the performance of Covered Services under this Agreement, a provision that said subcontractor shall pay to all persons performing labor in connection with Covered Services under said subcontract or other arrangement not less than the highest general prevailing rate of wages as fixed and determined by the Board of Supervisors for such labor or services.

3.6.4 **Posted Notices.** As required by Section 1771.4 of the California Labor Code, Contractor shall post job site notices prescribed by the California Department of Industrial Relations (“DIR”) at all job sites where services covered by Chapter 6.22 are to be performed.

3.6.5 **Payroll Records.** As required by Section 6.22(e)(6) of the Administrative Code and Section 1776 of the California Labor Code, Contractor shall keep or cause to be kept complete and accurate payroll records for all trade workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided

Covered Services on the project, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall undertake the performance of any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by the City and its authorized representatives and the DIR.

3.6.6 Certified Payrolls. Certified payrolls shall be prepared pursuant to Administrative Code Section 6.22(e)(6) and California Labor Code Section 1776 for the period involved for all employees, including those of subcontractors, who performed labor in connection with Covered Services. Contractor and each subcontractor performing Covered Services shall submit certified payrolls to the City and to the DIR electronically. Contractor shall submit payrolls to the City via the reporting system selected by the City. The DIR will specify how to submit certified payrolls to it. The City will provide basic training in the use of the reporting system at a scheduled training session. Contractor and all subcontractors that will perform Covered Services must attend the training session. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

3.6.7 Compliance Monitoring. Covered Services to be performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and /or the OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements, and agrees to take the specific steps and actions as required by Section 6.22(e)(7) of the Administrative Code. Steps and actions include but are not limited to requirements that: (i) the Contractor will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on Public Works Contractor by the Charter and Chapter 6 of the San Francisco Administrative Code; (ii) the Contractor agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (iii) the contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iv) the Contractor shall prominently post at each job-site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (v) that the Labor Standards Enforcement Officer may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the Charter and this Chapter on Public Works Contractors. Failure to comply with these requirements may result in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

3.6.8 Remedies. Should Contractor, or any subcontractor who shall undertake the performance of any Covered Services, fail or neglect to pay to the persons who perform

Covered Services under this Contract, subcontract or other arrangement for the Covered Services, the general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in Administrative Code Section 6.22 (e) and/or California Labor Code Section 1775. The City, when certifying any payment which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

3.7 Reserved (Displaced Worker Protection Act). This Agreement is for building maintenance services, more than \$25,000 and for at least a 3-month term, employees must work at least 15 hours per week. Contractors are hereby notified of the requirements to comply with the Displaced Worker Protection Act (DWPA, Article 33C of the San Francisco Police Code). The DWPA applies to any contract (services contract) to be performed with the City and County of San Francisco (City), entered into between City and any individual, proprietorship, partnership, joint venture, corporation, Limited Liability Company, trust, association or other entity with 25 or more employees. Employee for the purpose of the DWPA includes any service employee of the contractor or its subcontractor(s) who works at least 15 hours per week and whose primary place of employment is in the City but does not include: 1) managerial, supervisory or confidential employees as defined by the Fair Labor Standards Act; or 2) employees who do not possess or have not maintained a required occupational license.

3.7.1 Transition Employment Period

A. Where the contracting City department has given notice that a service contract has been terminated or ended, or where a service contractor has given notice of such termination, upon giving or receiving such notice, as the case may be, the terminated or ending contractor shall, within ten days thereafter, provide to the successor contractor, the name, date of hire, and employment occupation classification of each employee employed at the site or sites covered by the prospective contractor at the time of contract termination (employment information). This provision shall also apply to the subcontractors of the terminated contractor. If the terminated contractor does not know the identity of the successor contractor, if any, by the time of the contract termination notice, the terminated contractor shall obtain such information from the contracting City department at such time. Where a subcontractor of a service contractor has been terminated prior to the termination of the service contract, the terminated subcontractor shall be deemed a terminated contractor for purposes of the DWPA.

B. A successor contractor shall retain, for a 90-day transition employment period, employees who have been employed by the terminated contractor or its subcontractors, if any, for the preceding eight months or longer at the site or sites covered by the contract.

C. If at any time a successor contractor determines that fewer employees are required to perform the new service contract than were required by the terminated contractor (and subcontractors, if any), the successor contractor shall retain employees by seniority within job classifications.

D. During such 90-day period, the successor contractor (or subcontractor, where applicable) shall maintain a preferential hiring list of eligible covered employees not retained by the successor contractor (or subcontractor) from which the successor contractor (or subcontractor) shall hire additional employees.

E. Except as provided in subsection C of this section, during such 90-day period, the successor contractor (or subcontractor, where applicable) shall not discharge without cause an employee retained pursuant to the DWPA. Cause for this purpose shall include, but not be limited to, the employee's conduct while in the employ of the terminated contractor or subcontractor that contributed to any decision to terminate the contract or subcontract for fraud or poor performance, excluding permissible union-related activity.

F. At the end of such 90-day period, a successor public sector contractor (or subcontractor, where applicable) shall perform a written performance evaluation for each employee retained pursuant to the DWPA. If the employee's performance during such 90-day period is satisfactory, the successor public sector contractor (or subcontractor) shall offer the employee continued employment under the terms and conditions established by the public sector successor contractor (or subcontractor) or as required by law.

G. Contractors must include a provision in all subcontracts requiring subcontractors to comply with the obligations imposed by the DWPA.

3.7.2 Enforcement

A. An employee who has been discharged in violation of the DWPA by a successor contractor or its subcontractor may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, against the successor contractor and, where applicable, its subcontractor, and may be awarded back pay, including the value of benefits, for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

1. The average regular rate of pay received by the employee during the last three years of the employee's employment in the same occupation classification; or
2. The final regular rate received by the employee.

B. If the employee is the prevailing party in any such legal action, the Court shall award reasonable attorney's fees and costs as part of the costs recoverable.

3.7.3 **Successor's Prior Employees.** A successor contractor or subcontractor may replace an employee retained pursuant to the DWPA with a person employed by the contractor or subcontractor continuously for eight months prior to the commencement of the successor service contract or subcontract in a capacity similar to that proposed under the successor service contract or subcontract, but only if the existing employee of the successor contractor or subcontractor would otherwise be laid off work as a result of the award of the successor contract.

Article 4 Services

4.1 Reserved (Primary and Secondary Contractors).

4.2 **Term Agreement – Indefinite Quantities.** This is a term, indefinite quantities Agreement to supply the Services identified in this Agreement. Unless otherwise specified herein, Services will be required in quantities and at times as ordered during the period of the Agreement. Estimated Services are approximate only. City, in its sole discretion, may purchase any greater or lesser quantity. Purchasing may also make purchases from other suppliers when Purchasing determines, in its sole discretion, that the City has an immediate need for the Services

or that it is not practical to purchase against this Agreement. City will not honor minimum order charges under this Agreement.

4.3 Personnel

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

4.3.2 **Contractor Vaccination Policy.**

(a) Contractor acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency ("Emergency Declaration"), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator ("Contractor Vaccination Policy"), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>.

(b) A Contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the Contractor or Subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a City owned, leased, or controlled facility. Such agreements include, but are not limited to, professional services contracts, general services contracts, public works contracts, and grants. Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. Contract does not include an agreement with a state or federal governmental entity or agreements that do not involve the City paying or receiving funds.

(c) In accordance with the Contractor Vaccination Policy, Contractor agrees that:

(i) Where applicable, Contractor shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and ensure such Covered Employees are either fully vaccinated for COVID-19 or obtain from Contractor an exemption based on medical or religious grounds; and

(ii) If Contractor grants Covered Employees an exemption based on medical or religious grounds, Contractor will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form ("Exemptions Form"), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to "Exemptions" to download the form).

4.4 **Reserved.**

4.5 **Services.**

4.5.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in Appendix A. Officers and employees of the City are not authorized to

request, and the City is not required to reimburse the Contractor for, Services beyond the Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, “Modification of this Agreement.”

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

4.5.3 **Awarded Services.** If, during the term of the Agreement, a contract service is determined to be unacceptable for a particular department, and such is documented by Purchasing, it is understood and agreed that the service will be canceled and removed from the Agreement without penalty to City. City’s sole obligation to Contractor is payment for Services performed prior to the cancellation date. City shall give Contractor ten days’ notice prior to any cancellation. City will contract for the required service from any source and in the manner as determined by Purchasing. Contractor must notify Purchasing in writing, which can include email, certified mail, registered mail, or other trackable mail, 30 days in advance of any changes in the Services required in the Agreement. Any changes made without the approval of Purchasing will constitute a Default.

4.5.4 Independent Contractor; **Payment of Employment Taxes and Other Expenses**

(a) Independent Contractor. For the purposes of this Section 4.5, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it delivers the Services required by this Agreement and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing any of the obligations pursuant to this Agreement, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and

not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

(b) **Payment of Employment Taxes and Other Expenses.**

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past Services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.5 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

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

4.7 **Reserved (Liquidated Damages).**

4.8 **Reserved (Performance Bond).**

4.9 **Reserved (Fidelity Bond).**

4.10 **Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver Services using all modes of transportation available. Contractor shall provide a 24-hour emergency telephone number of a company representative who is able to receive and process orders for immediate delivery or will call in the event of an emergency. In addition, the Contractor shall charge fair and competitive prices for Services ordered during an emergency and not covered under the awarded Agreement.

4.11 **Usage Reports by Contractor.**

4.11.1 Each year, no later than February 15, Contractor shall prepare and submit to City an electronic report of the total Services rendered under this Agreement during the preceding calendar year (January 1 – December 31). The report must list by City department the following: (1) all Services ordered (“Order”) (2) all Services delivered; (3) the date on which each Order was placed; (4) the date on which each Order was delivered; and (5) total quantity and unit price of the Services contained within each Order. Contractor must also furnish a separate similar report for the total of all items Services ordered by City which are not part of this Agreement. Contractor shall email reports to OCAVendor.Reports@sfgov.org.

4.11.2 Any report files larger than 10MB must be submitted in electronic format on USB drive and mailed to the address shown below with the term Agreement number and “Annual Supplier Reporting” clearly marked on the envelope/packaging. Contractor shall mail the reports to:

OCA Supplier Reporting
Re: Term Contract No. 63002
City and County of San Francisco
Office of Contract Administration – Purchasing
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

4.11.3 City reserves the right to terminate this Agreement if information requested from and submitted by Contractor fails to satisfy City and/or Contractor is unable to provide the information and/or documentation within the period requested.

Article 5 Insurance and Indemnity

5.1 **Insurance.**

5.1.1 **Required Coverages.** Without in any way limiting Contractor’s liability pursuant to the “Indemnification” section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

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

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

(d) Reserved (Professional Liability Insurance).

(e) Reserved (Technology Errors and Omissions Liability Insurance).

(f) Reserved (Cyber and Privacy Insurance).

(g) Pollution Liability Insurance applicable to Contractor’s activities and responsibilities under this Agreement with limits not less than \$1,000,000 each occurrence combined single limit, including coverage for on-site third party claims for bodily injury and property damage.

5.1.2 Additional Insured Endorsements

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

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

(c) The Commercial Automobile Liability Insurance policy must be endorsed to include (i) Auto Pollution Additional Insured Endorsement naming as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees; and (ii) Form MCS-90 for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980.

5.1.3 Waiver of Subrogation Endorsements

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

5.1.4 Primary Insurance Endorsements

(a) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) The Pollution Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.5 Other Insurance Requirements

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

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

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

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

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

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

5.2 Indemnification.

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; (v) breach of contract; or (vi) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable

to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (vi) above) arises directly or indirectly from Contractor’s performance of this Agreement, including, but not limited to, Contractor’s use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either’s agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City’s costs of investigating any claims against the City.

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

5.2.3 Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys’ fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor’s Services pursuant to this Agreement.

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY’S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, “PAYMENT,” OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

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

6.3 **Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor’s acts or omissions.

Article 7 Payment of Taxes

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest

taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Possessory Interest Taxes. Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply.

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

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

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

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

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

Article 8 Termination and Default

8.1 Termination for Convenience

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

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

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

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

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

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

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

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

8.1.3 Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth the cost of all Services delivered prior to City's notice of termination. City's payment obligation pursuant to this Subsection 8.1.3 shall be subject to Section 3.3.2 of this Agreement.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically listed in Section 8.1.2. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services rendered by Contractor under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.2.

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

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

8.2 Termination for Default; Remedies.

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

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

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

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

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

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

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

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

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

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

8.3 Non-Waiver of Rights.

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

8.4 Rights and Duties upon Termination or Expiration.

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

3.3.2	Payment Limited to Satisfactory Services		9.2	Works for Hire
3.3.7	Reserved (Grant Funded Contracts)		11.6	Dispute Resolution Procedure
3.4	Audit and Inspection of Records		11.7	Agreement Made in California; Venue
3.5	Submitting False Claims		11.8	Construction
Article 5	Insurance and Indemnity		11.9	Entire Agreement
6.1	Liability of City		11.10	Compliance with Laws
6.3	Liability for Incidental and Consequential Damages		11.11	Severability
Article 7	Payment of Taxes		Article 12	Department Specific Terms
8.1.6	Payment Obligation		Article 13	Data and Security
9.1	Ownership of Results		Appendix D	Reserved (Business Associate Agreement)

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this

Agreement shall be of no further force or effect. 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.

8.5 Relief for Force Majeure/Uncontrollable Circumstances; Change in Law.

Neither Party shall be liable to the other Party for breach or for failure or delay in the performance of its obligations hereunder caused by any act or occurrence beyond its reasonable control, including, but not limited to: fires; floods; strikes (except any strikes involving a Party's personnel); a change in Federal, State, or local law or ordinance; orders or judgments of any Federal, State or local court, administrative agency or governmental body; change in permit conditions or requirements; accidents; extreme weather conditions including, for example, hurricanes, tornadoes, unusually high amounts of precipitation, unusual extremes of temperature or wind, or unusually extended periods of adverse weather conditions; acts of war, aggression or terrorism (foreign or domestic); equipment failure (other than due to the inadequate maintenance thereof); and acts of God. It is specifically understood that, without limitation, none of the following acts, events or circumstances shall constitute an act or occurrence beyond a Party's reasonable control: (i) reasonably anticipated weather conditions normal for the region in which the work is performed or (ii) any failure to pay any sums in accordance with the terms of this Contract. Whenever the provisions of this Section are believed to apply, the Party relying thereon shall give prompt notice to the other Party of the circumstances, the basis for applicability of this Section and the time required to cure such breach or delay. Contractor shall promptly provide notice of the need, if any, for additional compensation or for renegotiation of terms in order to mitigate the effects of such event or to comply with a change in law or regulation or interpretation thereof. Contractor shall be entitled to additional time and compensation if such event delays performance into a season different from that assumed when this Contract was executed. Contractor and City shall use reasonable best efforts to agree on appropriate mitigating actions under the circumstances.

Article 9 Rights In Deliverables

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

9.2 Works for Hire. If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any

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

Article 10 Additional Requirements Incorporated by Reference

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

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

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

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

10.5 Nondiscrimination Requirements

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

comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

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

10.8 Health Care Accountability Ordinance. If Administrative Code Chapter 12Q applies to this Agreement, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.9 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

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

purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

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

10.12 Reserved (Slavery Era Disclosure).

10.13 Reserved (Working with Minors).

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

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

10.15 **Public Access to Nonprofit Records and Meetings.** If Contractor is a non-profit organization; provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries); and receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein; and receives a cumulative total per year of at least \$250,000 in City or City-administered funds and as defined in Chapter 12L of the San Francisco Administrative Code, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

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

10.17 **Distribution of Beverages and Water.**

10.17.1 **Sugar-Sweetened Beverage Prohibition.** Contractor agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

10.17.2 **Packaged Water Prohibition.** Contractor agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

10.18 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.^[TM2]^[EM3]

10.18.1 **Reserved.**

10.19 **Reserved (Preservative Treated Wood Products).**

10.20 **Reserved (Sweat Free Procurement).**

10.21 **Environment Code Chapter 5, Resource Conservation Ordinance.**

10.21.1 **Reserved (Printing Services and/or Writing Paper Products).**

10.21.2 **Reserved (Collection of Recyclable Materials).**

10.22 **Reserved (Prop J Approval).**

10.23 **Use of City Opinion.** Contractor shall not quote, paraphrase, or otherwise refer to or use any opinion of City, its officers or agents, regarding Contractor or Contractor's performance under this Agreement without prior written permission of Purchasing.

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

To City:	Director of Purchasing City and County of San Francisco Office of Contract Administration Purchasing Division City Hall, Room 430 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4685 Email: OCA@sfgov.org Phone: (415) 554-6743 Fax: (415) 554-6717
To Contractor:	James Dunbar General Manager Lystek International Limited 1014 Chadbourne Road Fairfield, CA 94534 Email: jdunbar@lystek.com Phone: (888) 501-6508

Any notice of default must be sent by registered mail or other trackable overnight mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

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

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

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

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement.

11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of Services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to

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

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

11.6.3 Health and Human Service Contract Dispute Resolution Procedure. If this Agreement is with a health and human services nonprofit, the Parties shall resolve disputes that have not been resolved administratively by other departmental remedies in accordance with the Dispute Resolution Procedure set forth in this Agreement and incorporated herein by this reference.

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

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

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

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

11.11 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as

to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

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

11.13 Order of Precedence. Contractor agrees to perform the Services described herein in accordance with the terms and conditions of this Agreement. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's bid and/or proposal, and Contractor's printed terms, respectively.

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

11.15 Cooperative Agreement. Contractor agrees that during the term of this Agreement and any authorized extension, the Director of Purchasing may allow other public agencies or non-profits made up of multiple public agencies to utilize this Agreement to obtain some or all of the Services to be provided by Contractor under the same terms and conditions as the City.

Article 12 Department Specific Terms

12.1 Third Party Beneficiaries.

No third parties are intended by the Parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either Party by any person who is not a party hereto.

12.2 Exclusion Lists and Employee Verification.

12.2.1 Contractor acknowledges that some or all of the Services that Contractor furnishes to City under this Agreement may be included, directly or indirectly, in whole or in part, in claims submitted by City to Federal or State health care programs. By executing this Agreement Contractor certifies that it is not currently, and shall not during the term of this Agreement become, excluded, directed to be excluded, suspended, ineligible or otherwise sanctioned from participation in any Federal or State assistance programs. Contractor shall notify City, as provided in Section 11.1 ("Notices to the Parties"), within thirty (30) days of any such exclusion, suspension, ineligibility, or other sanction. This is a material term of this

Agreement. Contractor agrees to indemnify and hold harmless City and City's officers, directors, employees, agents, successors and permitted assigns from and against any and all (including but not limited to Federal, State, or third party) civil monetary penalties, assessments, repayment obligations, losses, damages, settlement agreements and expenses (including reasonable attorneys' fees) arising from the exclusion, suspension, ineligibility, or other sanction of Contractor and/or Contractor's workforce (including those who oversee Contractor's workforce, supervisors and governing body members) from participation in any Federal or State assistance program.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

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

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

13.2 Reserved (Payment Card Industry ("PCI") Requirements).

13.3 Business Associate Agreement.

The Parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is required to comply with the HIPAA Privacy Rule governing the access, use, disclosure, transmission, and storage of protected health information (PHI) and the Security Rule under the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act").

The Parties acknowledge that CONTRACTOR will:

1. Do **at least one** or more of the following:
 - A. Create, receive, maintain, or transmit PHI for or on behalf of City (including storage of PHI, digital or hard copy, even if Contractor does not view the PHI or only does so on a random or infrequent basis); or
 - B. Receive PHI, or access to PHI, from City or another Business Associate of City, as part of providing Services to or for City including legal,

actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial; or

C. Transmit PHI data for City and require access on a regular basis to such PHI. (Such as health information exchanges (HIEs), e-prescribing gateways, or electronic health record vendors)

For purposes of this Agreement, Contractor is a Business Associate of CITY, as defined under HIPAA. Contractor must comply with and complete the Business Associate Agreement and attestations attached to this Agreement.

2. **NOT do any of the activities listed above in subsection 1;**

Contractor is not a Business Associate of CITY. A Business Associate Agreement and Attestations are not required for the purposes of this Agreement.

13.4 **Protected Health Information.** Where applicable, Contractor, all subcontractors, all agents and employees of Contractor and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health information, if any, disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Agreement. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of protected health information given to Contractor or its subcontractors or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement.

13.5 **Management of City Data and Confidential Information**

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

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

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

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

Article 14 MacBride And Signature

14.1 MacBride Principles -Northern Ireland.

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

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

CITY

CONTRACTOR

Recommended by:

Lystek International Limited

Linda Repola
Supervising Purchaser
Office of Contract Administration

James Dunbar
General Manager

City Supplier Number: 0000016015

Approved as to Form:

David Chiu
City Attorney

By: _____
Tyson Arbuthnot
Deputy City Attorney

Approved:

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

A:	Scope of Services
B:	Calculation of Charges
C:	Regulatory and Compliance Requirements
D:	Reserved (BAA)

Appendix A Scope of Work

A. Services to be Provided

1. Contractor shall provide services to produce Class-A biosolids from biosolids from the Southeast and Oceanside Treatment Plants. SFPUC generates approximately 55,000 to 65,000 wet tons of anaerobically digested, Class-B biosolids [AT(4)]per year.
2. The SFPUC's Biosolids Coordinator will determine the daily quantities of biosolids to be delivered to the Contractor's facilities. If multiple facilities are provided, the SFPUC Biosolids Coordinator will ensure that the annual quantity of biosolids delivered to each site is in keeping with the annual quantity for each site proposed by the Contractor.
3. Contractor must have an operational facility capable of producing a useable Class-A biosolids product. The Class-A biosolids product should meet Class-A pathogen standards, as specified in 40 CFR 503. Biosolids products should be suitable for use in agricultural or horticultural markets in Northern California.
4. No minimum tonnage is guaranteed to any Contractor's facility via this Contract.
5. Distribution of the biosolids products created through this Contract will be the responsibility of the Contractor. Biosolids products shall be beneficially used and not sent to a landfill for disposal or use as alternative daily cover.
6. SFPUC staff may, at any time during the Contract period, request any available analysis, data, or reports of the final product quality from the Contractor. The data could consist of any analysis, data, or reports required by USEPA, Regional Water Quality Control Board, CalRecycle Permits, Regional Air Quality Management District and the applicable County Agency. The data reports must be provided within two calendar weeks of the request date, at no charge to the SFPUC.
7. The Contractor shall produce monthly and annual usage reports. These reports should include, at a minimum, the dates and tonnages of biosolids deliveries, the number of truck loads received, and quantity and price of biosolids products sold which were derived from SFPUC biosolids.
8. The SFPUC shall provide anaerobically digested, dewatered biosolids that are as free of grit and screenings as possible, and that have been dewatered through mechanical equipment. For reference, in 2021 Oceanside biosolids were an average of 21.3% total solids and Southeast biosolids solids were an average of 23.5% total solids. The SFPUC makes no guarantee as to the percent total solids of the biosolids. |

[AT(5)]EM6

9. The SFPUC uses a Biosolids Management System to oversee its biosolids program. The policy of this management system is for the SFPUC, "To promote

the beneficial and cost-effective use of biosolids while preventing any negative impacts, maximizing the recycling of resources, and protecting public health and the environment.” The Contractor’s actions shall be consistent with the SFPUC’s Biosolids Management System policy.

B. Contractor’s Facility(ies)

1. The Contractor’s facility(ies) must have a minimum annual capacity of 35,000 wet tons.
2. The Contractor’s facility(ies) must be located no more than 175 miles (one-way distance) from the Southeast Treatment Plant, located at 750 Phelps Street, San Francisco.
3. The Contractor’s facility(ies) must have all required permits to perform and provide the services as required under this Contract. All services provided as a part of this Contract must comply fully with all applicable Federal, State, and Local laws and requirements including those set forth by CalRecycle, the California Air Resources Board, Bay Area Air Quality Management District, and the California Regional Water Quality Control Boards.
4. Facilities under this Contract shall be open and available for delivery of biosolids at least 8 hours per day, seven days per week. The facility must have a start time at least as early as 8am.
5. Facilities must be fully operational and able to receive biosolids upon award of the Contract, anticipated to be May 15, 2022.
6. If feasible based on the type of biosolids product produced, the SFPUC may request up to two (2) backhauls of finished product from the Contractor per year. Such product would be given to the SFPUC free of charge and hauled by the SFPUC’s contracted trucking company to a destination specified by the SFPUC.
7. The facilities proposed must not cause a nuisance to nearby residences, including excessive dust, odor and vectors.
8. Site visits and inspections may be conducted unannounced by City staff. Access to City staff and agents cannot be unreasonably restricted.

C. Requirements for Class-A Biosolids

1. The Contractor will not be responsible for creating a product which meets the limits in Table 3 of 40 CFR 503.13 if the biosolids they receive from the SFPUC do not meet these standards. If the Contractor is provided biosolids which meet the limits in Table 3 of 40 CFR 503.13 and the VAR requirements in 40 CFR 503.33, they must produce a Class A EQ biosolids products as defined by the following federal regulations:
 - a. Meet the pollutant limits as defined in Tables 1 and 3 of 40 CFR Part 503.13.
 - b. Meet the Class-A pathogen density levels defined in 40 CFR Part 503.32.

- c. Meet one of the attraction reduction (VAR) options as defined in 40 CFR Part 503.33. VAR shall be met concurrent with or after the pathogen reduction process used by the Proposer to meet Class A pathogen density levels for any product.
 - d. Maintain records as required in 40 CFR 503.17.
2. The Contractor shall ensure all applicable state and local regulations for the production and use of biosolids products are adhered to. This includes but is not limited to the specifications stated in this Contract. [LR7]
 3. The SFPUC shall provide appropriate quality testing results for the SFPUC's biosolids to the Contractor for the metals outlined in 40 CFR Part 503.13 and documentation of how biosolids meet VAR requirements in 40 CFR 503.33.

D. Logistics and Document Compliance

Information to be provided by Contractor upon award.

1. A Closure Plan and Emergency Plan for responding to material spills.
2. A Health and Safety Plan. The plan must be maintained and practiced, include training, reporting procedures and regular reviews and updates of Contractor's facilities.
3. A Public Outreach Policy or Community Response Plan which at a minimum identifies responsible personnel, response time and course of action taken when a complaint is received from a member of the public.
4. All required permits to provide the services and facilities. Copies of current permits must be submitted including CalRecycle, Water Board, and Air Board permits if proposed facility(ies) require such permits. The Contractor should use the table in Exhibit 1, Appendix A and list all permit numbers.
5. A summary of violations in the last (3) years, if any, in the State of California attributable to handling and disposing grit and/or biosolids.

Appendix B
Calculation of Charges

SITE	MINIMUM CAPACITY	PRICE
Lystek Fairfield OMRC	17,500 wet tons	\$111.73 / wet ton
SynaGro Central Valley Compost (CVC)	17,500 wet tons	\$69.44 / wet ton

Appendix C
Regulatory and Compliance Requirements

1. Reserved (Delivery).

2. Price.

Only prices that appear on Appendix B will be considered. No other pages with prices or attached price lists and/or catalog prices will be considered. Prices shall be exclusive of any Federal, State, local sales or use tax. In the event of a discrepancy between the unit price and the extended price, the unit price will prevail.

3. Price Adjustment.

A. When to request a Price Adjustment:

1. Requests for Price Adjustments must be made in writing to City.
2. Contractor may request Price Adjustments no sooner than twelve (12) months from the Bid Due Date of April 18, 2022.
3. Only (1) one Price Adjustment shall be approved in any twelve (12) month period.
4. If approved, Price Adjustments will be implemented with an Amendment to this Agreement and shall be effective upon execution of the Amendment.

B. How Price Adjustments will be Calculated:

Requests for price adjustments under this Agreement must be supported by the U.S. Department of Labor's most recently published, **non-preliminary** Consumer Price Index (CPI) available at the time of Contractor's Price Adjustment request. The requested rate change shall be calculated from the last requested Price Adjustment or, if no Price Adjustment has previously been requested, from the Bid Due Date.

CPI for All Urban Consumers (CPI-U)

Series ID: CUURS49BSA0 (Not Seasonally Adjusted)

Series Title: All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted

Area: San Francisco-Oakland-Hayward, CA

Item: All items

Website: www.bls.gov/data/

4. Additional Services.

If, in the satisfaction of governmental interests it is necessary to purchase additional Services from Contractor, additional Services may be added to this Agreement by mutual agreement of the Parties in accordance with Chapter 21 of the San Francisco Administrative Code.

5. Regulatory Requirements.

- A. Contractor's facility(ies) must be permitted by applicable regulatory agencies (e.g. CalRecycle, Regional Water Quality Control Board) to receive and accept

the characterized material. The site must have all required permits to perform and provide the services as required under this Contract. All items covered under this Contract must comply fully with all specifications stated herein as well as all applicable Federal, State, and local laws and requirements (e.g. California Air Quality Resources Board Permits, Regional Water Quality Control Board Permits.) The latest versions of all specifications apply to this contract. The Contractor shall use the table in Appendix A – Exhibit 1 and list all permit numbers upon contract award. There is extra space to enter any additional required site permits that are not listed in the table. Contractor shall submit Appendix A – Exhibit 1 with copies of any and all permits currently held for each facility upon contract award.

- B. Permits shall accommodate the handling of the minimum quantity of biosolids per year specified herein, throughout the entire term of the contract. All costs associated with obtaining the required permits shall be borne by the Contractor and shall be considered part of the proposed compensation for services.
- C. Contractor shall produce monthly and annual usage reports. These reports should include, at a minimum, the dates and tonnages of biosolids deliveries, the number of truck loads received, quantity and price of biosolids products sold which were derived from SFPUC biosolids.

6. Other Requirements.

- A. **Permits/Licenses:** Contractor must have all requisite permits, licenses, and professional credentials necessary to perform the services as specified. The Contractor must comply with all OSHA regulations for worker safety.
- B. **Support:** Contractor shall be responsible for providing technical support and assistance to the City through Contractor's own personnel, equipment and facilities as well as through manufacturer's technical representatives. As part of this technical support and assistance, the Contractor shall provide personnel with in-depth technical knowledge of the products the Contractor is providing under this Agreement, to answer questions and offer any assistance required by City personnel, during City business hours (8:00 A.M. – 5:00 P.M.).
- C. **Incidental Costs:** All costs associated with obtaining any required permits shall be borne by the Contractor and shall be considered part of the proposed compensation for services.

Appendix D
Reserved (BAA)



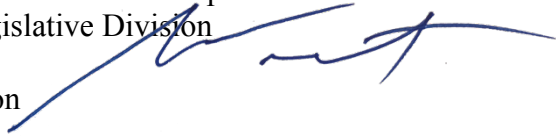
President, Board of Supervisors
District 10

City and County of San
Francisco

SHAMANN WALTON
MEMORANDUM

DATE: June 7, 2022

TO: Angela Calvillo, Clerk of the Board of Supervisors
Board of Supervisors Legislative Division

FROM: President Shamann Walton 

CC: Chair Dean Preston, Government Audit & Oversight
Anne Pearson, Deputy City Attorney
Tom Paulino, Mayor's Office
City Administrator's Office

SUBJECT: **Transferring Items from B&F to GAO**

Dear Madam Clerk and Legislative Division Staff,

I am hereby granting the request to transfer the following matters from the Budget & Finance Committee to the Government Audit & Oversight Committee due to the impacted schedule of the Budget & Finance Committee:

- 220544 [Agreement - LAZ Parking California, LLC - Parking Meter Coin and Parking Data Collection Services - Not to Exceed \$50,798,833
- 220554 [Real Property Lease Amendment - Evans Investment Partners, LLC - 750 and 752 Vallejo Street - \$120,792 Annual Base Rent - Estimated \$267,382 Tenant Improvement Cost]
- 220599 [Contract Amendment - Professional Contractor Supply (PCS) - Purchase of Hardware Supplies - \$11,500,000]
- 220600 [Contract - Lystek International Limited - Class A Biosolids Management Services - Not to Exceed \$22,400,000]
- 220601 [Contract - Kemira Water Solutions - Ferric Ferrous Chloride - Not to Exceed \$26,000,000]
- 220602 [Contract - TR International Trading Company - Ferric Ferrous Chloride - Not to Exceed \$28,000,000]
- 220603 [Contract - Univar Solutions USA Inc. - Sodium Hypochlorite - Not to Exceed \$74,000,000]
- 220604 [Contract - Univar Solutions USA Inc. - Sodium Bisulfite - Not to Exceed \$19,000,000]
- 220608 [Multifamily Housing Revenue Bonds - 700-730 Stanyan Street - Not to Exceed \$130,000,000]
- 220645 [Accept and Expend Grant - California Arts Council - Design and Planning for Harvey Milk Plaza - \$1,500,000]
- 220646 [Multifamily Housing Revenue Bonds - Sunnydale HOPE SF Block 3A - Not to

Exceed \$74,000,000]

- 220647 [Multifamily Housing Revenue Bonds - Building E Balboa Reservoir - 11 Frida Kahlo Way - Not to Exceed \$102,000,000]

CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292
FAX (415) 252-0461

July 1, 2022


TO: Government Audit and Oversight Committee
FROM: Budget and Legislative Analyst 
SUBJECT: July 7, 2022 Government Audit and Oversight Committee Meeting

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5	22-0600 Contract - Lystek International Limited - Class A Biosolids Management Services - Not to Exceed \$22,800,000	5
6	22-0422 Contract Modification - Recology San Francisco - Refuse Collection Services - Not to Exceed -\$39,600,000	11

<p>Item 2 File 22-0642</p>	<p>Department: Mayor’s Office of Housing & Community Development (MOHCD)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> The proposed ordinance would amend Chapter 47 of the Administrative Code to add an enhanced housing preference for veterans of the armed services. Veterans with housing preferences noted in the Code would take priority over non-veterans within each category of housing preferences. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> Affordable housing units are assigned by lottery, with applicants in a preference category receiving priority. Chapter 47 housing preference categories include, in order of priority: (1) applicants who have been displaced by Redevelopment Agency projects, (2) applicants displaced by an Ellis Act, owner move-in eviction, fire, or applicants vacating a unit that is no longer income-restricted, (3) applicants living within a half mile or the same Supervisorial District as an affordable housing unit, and (4) applicants who live or work in San Francisco. All of these preference categories have been added by the Board of Supervisors since 2008. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> According to MOHCD, creating a veteran housing preference priority would take approximately 2,640 hours of work, or approximately 1.5 full-time equivalent positions (FTE). Completing the necessary updates to the DAHLIA system could be accomplished by temporary staff, the cost of which would be \$300,000 - \$400,000. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> According to the proposed ordinance, in 2018 approximately 15,648 (or 62.6 percent) of veterans would have incomes between 30 and 80 percent of area median income, making them eligible for most MOHCD affordable housing programs. However, in April 2022, MOHCD completed a review using 2019 Census data that found that 5,750 or 23 percent of San Francisco veterans are in that income bracket. Given the size of the sample, the actual number of eligible veterans may differ from these estimates. Because the proposed ordinance creates a veterans housing preference priority, the four existing Chapter 47 housing preference categories must be expanded to eight new preference categories and the ranking system must be altered to accommodate a new hierarchy of veteran and non-veteran housing preference holders. According to MOCHD, adding a veterans preference category is less technically complex and may be accomplished at an approximate cost of \$135,000. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> Approval of the proposed ordinance is a policy matter for the Board of Supervisors. 	

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance, approved by a majority of the members of the Board of Supervisors.

BACKGROUND

Affordable Housing Preferences

Chapter 47 of the Administrative Code governs preferences for MOCHD below market rate rental and ownership housing programs, after applicants meet income and other program eligibility requirements.¹ Affordable housing units are assigned by lottery, with applicants in a preference category receiving priority. Chapter 47 housing preference categories include, in order of priority: (1) applicants who have been displaced by Redevelopment Agency projects, (2) applicants displaced by an Ellis Act, owner move-in eviction, fire, or applicants vacating a unit that is no longer income-restricted, (3) applicants living within a half mile or the same Supervisorial District as an affordable housing unit, and (4) applicants who live or work in San Francisco. All of these preference categories have been added by the Board of Supervisors since 2008.

In addition, MOHCD provides project-based housing preferences for public housing residents that have been relocated during public housing revitalization projects and other renovation projects, Treasure Island residents, and certain projects sponsored by the Office of Community Investment and Infrastructure. Finally, applicants from disaster areas, and first responder and educator participants in the Down Payment Assistance Loan Program receive housing preferences.

DAHLIA Database

MOHCD uses DAHLIA, a custom-built database and housing portal, to manage affordable housing listings and applications. The programming language is obsolete and department is collaborating with the Office of Digital Services to modernize the database and system for listing and applying for affordable housing. The FY 2022-23 – FY 2023-24 annual appropriation ordinance, pending before the Board of Supervisors, funds four new positions to support this effort. The four positions are: (1) a content designer to enhance user experience, (2) a data engineer to create and update data within DAHLIA, (3) a Salesforce Engineer to reduce the workload of application processing by better integrating datasets, and (4) a full stack engineer to re-write the database in a modern coding language. The annualized cost of these positions is approximately \$900,000 and, according to City Administrator staff, together they support the DAHLIA housing portal, enabling the addition of new programs and new housing preferences.

¹ Chapter 47 does not pertain to programs or affordable housing units exclusively supported by the Department of Housing and Urban Development, the San Francisco Human Services Agency, the San Francisco Department of Public Health, or the San Francisco Housing Authority

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend Chapter 47 of the Administrative Code to add an enhanced housing preference for veterans of the armed services that have a Chapter 47 housing preference. Veterans would take priority over non-veterans within each category of housing preferences.

FISCAL IMPACT

According to information provided by MOHCD, creating a veteran housing preference priority would require 2,640 hours of work, which translates to approximately 1.5 full-time equivalent staff. According to MOHCD, the four new DAHLIA positions will be immediately occupied with other projects but completing the necessary updates to the DAHLIA system could be accomplished by temporary staff.

The cost the DAHLIA job class added in FY 2022-23 (1043 IS Engineer Senior) is \$238,433 per year or \$114.63 per hour, including salary and benefits. MOHCD provided a cost estimate for the work at \$155 per hour. We therefore estimate the implementation cost to be between \$300,000 - \$400,000.

POLICY CONSIDERATION

Veterans in San Francisco

Based on information from the U.S. Census and Department of Defense, we estimate San Francisco veterans are 3.1 percent of the City's population, or approximately 25,000 people. According to the proposed ordinance, in 2018 approximately 15,648 (or 62.6 percent) of veterans would have incomes between 30 and 80 percent of area median income, making them eligible for most MOHCD affordable housing programs. However, in April 2022, MOHCD completed a review using 2019 Census data that found that 5,750 or 23 percent of San Francisco veterans are in that income bracket, 17 percent of veterans were below 30 percent of area median income (and therefore not eligible for most MOHCD affordable housing units), and the remaining population had incomes higher than 80 percent of area median income. Given the size of the sample, the actual number of eligible veterans may differ from these estimates.

Adding Veteran Housing Preference Without Adding a Preference Hierarchy May Be Less Costly

Because the proposed ordinance creates a veterans housing preference priority, the four existing Chapter 47 housing preference categories must be expanded to eight new preference categories and the ranking system must be altered to accommodate a hierarchy of veteran housing

preference holders followed by non-veteran housing preference holders.² According to MOCHD, adding a veterans preference category, rather than a priority within existing categories, is less technically complex and may be accomplished at an approximate cost of \$135,000. If the Board of Supervisors adopts this change, it should work with MOHCD to determine the appropriate ranking of veterans among the four Chapter 47 housing preferences.

RECOMMENDATION

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

² For example, under the proposed ordinance, displaced tenants who are veterans would take priority over non-veteran displaced tenants, who in turn would take priority over veteran neighborhood preference applicants.

<p>Item 5 File 22-0600 <i>(Continued from June 16, 2022)</i></p>	<p>Department: Office of Contract Administration</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p>	
<ul style="list-style-type: none"> • The proposed resolution would approve the contract for biosolids production and management services between Lystek International Limited and the City for a term of five years (from July 2022 through June 2027) and initial amount of \$16.4 million, with one two-year option to extend through June 2029 for an additional \$6.4 million, for a total possible contract duration of seven years and not to exceed amount of \$22.8 million. 	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> • The City’s two wastewater facilities, the Southeast Wastewater Treatment Plant and the Oceanside Wastewater Treatment Plant, produce approximately 60,000 wet tons of “Class B” biosolids per year. These biosolids can be used as a fertilizer to improve soil quality. The proposed contract entails the management and conversion of biosolids. SFPUC has increased conversion of biosolids due a change in state law that effectively eliminates sending biosolids to landfills. • Since the current contract with Lystek expired and could not be extended, OCA released a new solicitation for the same types of biosolids production and management services in March 2022. Lystek International was the only contractor to submit a bid and will continue to provide the same type of biosolids processing services except with the addition of the SynaGro Central Valley Compost site, which was not a part of the previous contract. 	
<p style="text-align: center;">Fiscal Impact</p>	
<ul style="list-style-type: none"> • Estimated costs under the proposed contract are approximately \$15.1 million for the first five years of the contract (July 2022 through June 2027), and approximately \$22 million if the Department exercises the two-year extension option through June 2029. The not to exceed amount includes a 3.7 percent contingency to account for higher than budgeted inflation. Costs will be paid for by SFPUC Wastewater Enterprise funds. • Under the proposed contract, processing costs have increased approximately 55 percent (from an average of \$72 to approximately \$112) due to higher chemical and transportation costs. If operating costs do decrease significantly, as indicated by the regional consumer price index, the Department will consider rebidding the contract after 5 years. 	
<p style="text-align: center;">Recommendation</p>	
<ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

Treatment of Wastewater in San Francisco

The City's two wastewater facilities, the Southeast Wastewater Treatment Plant and the Oceanside Wastewater Treatment Plant, produce approximately 60,000 wet tons of "Class B" biosolids per year. These biosolids are used as a fertilizer to improve soil quality. The proposed contract entails the management and conversion of the City's biosolids from "Class B" to "Class A" biosolids. "Class B" biosolids is a designation for treated sewage solids that meets EPA guidelines for use as fertilizer and has undergone treatment to reduce (but not eliminate) pathogens. Class A biosolid products, such as liquid fertilizer or compost, have undergone pathogen elimination and are suitable for sale to a variety of horticultural or agricultural markets. Since 2017, Lystek International, a Canadian waste treatment technology company, has been responsible for the management and conversion of Class B biosolids into Class A. A different contractor, Denali Water Solutions, is responsible for transporting the biosolids to facilities outside of San Francisco after it has been processed at the City's wastewater treatment facilities. The City's contract with Denali Water Solutions LLC is for a three-year term (October 2019 through September 2022) with a not to exceed amount of \$8.7 million.

Previous Contract #63001 for Biosolids Beneficial Reuse Services

In March 2017, the Office of Contract Administration (OCA) released a solicitation for reuse services to either convert Class B biosolids into Class A marketable biosolid products or to process biosolids for energy and/or fuel production.¹

Lystek International submitted a bid and was awarded contract #63001 for the processing and conversion of Class B biosolids into Class A biosolids. In May 2017, the contract was executed with Lystek International for an initial 2-year total period from May 15, 2017 to May 14, 2019 with an initial not-to-exceed amount of \$500,000 and one three-year option to extend. The contract has been modified four times, increasing the not-to-exceed amount to \$5.7 million and extending the contract term to five years total (from May 2017 to May 14, 2022).

Because the current contract expired on May 14, 2022, OCA issued an emergency Purchase Order to pay for services from May 15, 2022 to July 1, 2022. Under contract #63001, Lystek operated the Lystek Fairfield Organic Material Recovery Center (OMRC), which received and processed wet

¹ Biosolids, as a byproduct of wastewater treatment, can also be used as a renewable energy resource.

biosolids from the City’s two wastewater treatment plants. Exhibit 1 shows the number of tons of biosolids processed at the site from 2019 through 2021.

Exhibit 1: Tons of Biosolids Processed at the Lystek Fairfield Organic Material Recovery Center under Contract 63001

Year	Tons of Biosolids Processed
2018	11,470
2019	15,081
2020	11,458
2021	25,996
2022	14,373
Total	78,378

Source: OCA and SFPUC

As shown in Exhibit 1 above, the Lystek Fairfield Organic Material Recovery Center received and processed 78,378 combined tons of biosolids from the Oceanside Wastewater Treatment Plant and the Southeast Wastewater Treatment Plant under the contract with Lystek International. The contract has been used to process larger quantities of material each year as the SFPUC shifts away from sending biosolids to landfills, a practice which Senate Bill 1383 (California’s Short-Lived Climate Pollutant Reduction Act) will effectively eliminate (see below).

New Solicitation to Procure Class A Biosolids Production and Management Services

Since the previous contract expired and could not be renewed, OCA released a new solicitation on March 29, 2022 for biosolids production and management services. The solicitation was a low bid solicitation, which means that the contract is awarded based on the lowest price that also meets the minimum requirements. As such, the solicitation was not scored and there were no panel members. Lystek International was the only contractor to submit a bid by the solicitation deadline. OCA staff determined that Lystek International’s proposal met the minimum qualifications required by the solicitation and accepted their bid.

The solicitation for proposed contract 63002 required a minimum capacity of at least 35,000 tons of biosolids per year. In response to the solicitation, Lystek International offered two sites with a total annual capacity of 35,000 tons to meet the requirements for increased capacity. There was no minimum capacity requirement for the previous contract 63001.

Required Increase in Biosolids Processing Capacity due to Senate Bill 1383

SB 1383 is a set of regulations which seek to reduce the amount of organic material being sent to landfill. When biosolids are sent to a landfill, in addition to this being a waste of their nutrients, methane gas, a potent greenhouse gas, is produced. Conversely when used as a fertilizer, the nutrients of the biosolids replace fossil fuel-based fertilizers and have been shown to sequester carbon. For these reasons, the SFPUC transitioned away from any management practices which are not in compliance with SB 1383.

According to OCA staff, when contract 63001 was first procured in 2017, Lystek's biosolids management services represented a much smaller part of PUC's overall biosolids management strategy. However, the passage of SB 1383 in 2016 required the state to take additional steps to reduce methane emissions and meet emissions reduction targets, including reducing organic waste being sent to a landfill by 50 percent of the statewide 2014 level by 2020 and by 75 percent in 2025. As a result of SB 1383, the City has transitioned from sending biosolids to landfill and increased processing of biosolids for other uses.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the contract for biosolids production and management services between Lystek International Limited and the City for a term of five years (from July 2022 through June 2027) and initial amount of \$16.4 million, with one two-year option to extend through June 2029 for an additional \$6.4 million, for a total possible contract duration of seven years and not to exceed amount of \$22.8 million. The resolution was amended in the June 16, 2022 Government Audit and Oversight meeting to correct the not to exceed amount from \$22.4 million to \$22.8 million.

Proposed Contract #63002 for Class A Biosolids Production and Management Services

The proposed contract 63002 requires the contractor to provide the same type of biosolids processing services as the prior contract 63001 except with the addition of the SynaGro Central Valley Compost site, which was not a part of the previous contract. Additionally, contract 63002 includes a requirement that the contractor's facilities have a minimum annual capacity of 35,000 wet tons. In the previous contract, there was no minimum annual capacity requirement.

The services provided under the contract are to continue to produce Class A biosolids from Class B biosolids received from the Southeast and Oceanside Wastewater Treatment plants. Lystek International would operate two sites under the contract, described below:

- Lystek Fairfield Organic Material Recovery Center (17,500 wet tons)
 - This site, located at the Fairfield-Suisun Sewer District, transforms biosolids received from the treatment plants into a Class A liquid fertilizer product. Lystek then sells the fertilizer to area farmers.
- SynaGro Central Valley Compost facility (17,500 wet tons)
 - The SynaGro site, located in Merced County, utilizes composting technology to create a composted end product that can be used to promote plant growth.

FISCAL IMPACT

According to Appendix B of the proposed contract, the cost to process biosolids at the Lystek Fairfield site is \$111.73 per wet ton and is \$69.44 per wet ton at the SynaGro compost site. The difference in cost is due to different treatment processes and final products at each site. Specifically, the Lystek Fairfield OMRC utilizes more expensive and complex technology to produce a liquid fertilizer, whereas the SynaGro CVC facility utilizes less costly composting

methods. The SynaGro site is further away from Southeast Wastewater Treatment Plant (284 miles) than the Fairfield site (95 miles), resulting in higher transportation costs to the City, which in turn fully offsets the SynaGro site's lower processing costs. According to Appendix C of the proposed contract, costs may be escalated by regional inflation each year.

Exhibit 2 below summarizes the estimated costs of the first year of contract spending.

Exhibit 2: Projected Costs for the Lystek's Biosolids Management Contract from July 2022 through June 2029

Year	Lystek OMRC	SynaGro	Projected Tons Processed	Total
1	\$1,955,275	\$591,629	26,020	\$2,546,904
2	2,004,157	969,474	31,121	2,973,631
3	2,054,261	1,020,956	31,494	3,075,217
4	2,105,617	1,074,741	31,872	3,180,359
5	2,158,258	1,130,925	32,255	3,289,183
<i>Subtotal, initial term</i>	<i>10,277,568</i>	<i>4,787,726</i>	<i>152,762</i>	<i>15,065,294</i>
6	2,212,214	1,189,608	32,642	3,401,822
7	2,267,520	1,250,891	33,033	3,518,411
Total	\$14,757,301	\$7,228,225	218,437	\$21,985,526

Source: Office of Contract Administration

As shown in Exhibit 2, the estimated costs under the proposed contract are approximately \$15.1 million for the first five years of the contract (July 2022 through June 2027), and approximately \$22 million if the Department exercises the two-year extension option through June 2029. According to OCA staff, the projected costs are only an initial estimate based on the assumption that the downtown City core will return to pre-pandemic population levels and that total tonnage of biosolids will increase 1.2 percent each year of the contract after 2022. The estimates also assume that the costs per ton at each site will increase by 2.5 percent each year based on inflation price adjustments, which are allowed in the contract.

According to Department staff, an estimated 17,500 tons will be sent to the Lystek Fairfield facility and 8,520 tons will be sent to the SynaGro facility during the first year of the contract, and that the tons of biosolids sent to the SynaGro facility will increase by 2.6 percent each year until the final year of the contract when SynaGro will eventually be processing 15,930 tons (from July 2028 – June 2029). Overall, the cost estimate projects that a total of 152,762 tons of biosolids will be processed over the course of the initial 5-year term and an additional 65,675 tons would be processed if the 2-year extension option is exercised, for total tonnage of 218,437 from July 2022 through June 2029. Due to the impact of COVID-related population fluctuations, and uncertainty regarding the number of commuters projected to return to the City over the next few years, OCA cannot provide estimates with certainty.

According to the Department, the remaining \$814,474 in the contract's \$22.8 million not to exceed amount may be needed as a buffer to account for additional potential price adjustments

based on the Consumer Price Index (CPI).

Increase in Costs from Prior Contract 63001

According to the Department, \$5,549,668 (out of \$5,700,000 available) was spent under the previous contract for biosolids management for the processing of 78,378 tons of biosolids at the Lystek Fairfield OMRC facility for an average cost per wet ton of \$70.81.²

Under the previous Lystek contract, costs ranged between \$70-73.23 per ton to process at the Lystek Fairfield OMRC site, depending on whether the biosolids were sourced from the Oceanside or Southeast treatment plants.³ Under the proposed contract, processing costs at the Fairfield site have increased approximately 55 percent (from an average of \$72 to approximately \$112). According to Department staff, the cost increase is due to increase in the costs of several components of the service. Potassium hydroxide, a key part of the Lystek process, has increased from \$0.28 to \$0.56 per pound, a 100% increase, from January 2022 to June 2022. The price of transporting liquid fertilizer to ranchers, a responsibility of the contractor, has increased by 55% over 2021 rates due to fuel cost increases and a shortage of drivers. Labor costs as well as propane have also increased. These four items, which have increased in cost since 2017, represent the majority of the contractor's per unit processing costs. If operating costs do decrease significantly, as indicated by the regional consumer price index, the Department will consider rebidding the contract after 5 years.

Funding Source

Contract costs will be paid for by SFPUC wastewater rate payers.

RECOMMENDATION

Approve the proposed resolution.

³ The proposed contract's processing rates are the same for both of the City's wastewater treatment facilities.

<p>Item 6 File 22-0422</p>	<p>Department: Office of Contract Administration (OCA)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> The proposed resolution would approve the Third Amendment to the City’s contract with Recology San Francisco, Recology Sunset Scavenger, and Recology Golden Gate (together “Recology”), increasing the not-to-exceed amount by \$23,978,000, for a total not to exceed \$39,600,000, and extending the term by two years through June 2024. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> Recology provides collection, processing, and disposal of refuse (recyclables, compostables, and garbage) to commercial and residential customers in the City. In 2020, the Office of Contract Administration (OCA) entered into a contract with Recology for refuse collection at City facilities, for an initial term of seven months, with an option to extend five months, and an amount not to exceed \$5,600,000. The contract has since been amended twice, for a total term of one year and seven months and an amount not to exceed \$15,622,000. The contract expired June 30, 2022. In the City’s prior contract with Recology, rates were based on the San Francisco Uniform Commercial Rates, with discounts for recycling and composting. The City’s 2020 contract referenced the Uniform Commercial Rates, however, given the anticipated rate setting process to take place this year and thus, the uncertainty around the Uniform Commercial Rates, the proposed Third Amendment no longer references the Uniform Commercial Rates. Instead, it uses the values for the FY 2022-23 Uniform Commercial Rates adjusted by inflation for the first amendment year and allows an escalation by inflation in May 2023 for FY 2023-24 (the second amendment year). <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> The proposed Third Amendment would increase the not-to-exceed amount of the contract by \$23,978,000, for a total not to exceed \$39,600,000. Costs are paid out of each City department budgets and depend on use. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> OCA has issued a competitive solicitation for a new refuse collection contract for City departments, with a goal to have a new contract in place by July 2024. The Controller’s Office has determined that Recology overcharged customers by \$23.4 million above the \$101 million settlement agreement approved by the Board of Supervisors and provided a gift to the Friends of the Environment in 2015 and 2019 during the Department of Environment’s contract negotiations with Recology. <p style="text-align: center;">Recommendations</p> <ul style="list-style-type: none"> Amend the proposed resolution to state that approval is retroactive to July 1, 2022. Approve the resolution as amended. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

Contract History

Recology provides collection, processing, and disposal of refuse (recyclables, compostables, and garbage) to commercial and residential customers in the City. In November 2020, the Budget and Finance Committee recommended approval of a resolution (File 20-1213) that would have approved a new \$62.5 million agreement with Recology through November 2026 to collect refuse from City facilities; however the Board of Supervisors re-referred the item back to that Committee after the U.S. Attorney's Office charged a Recology executive with bribing the former Director of Public Works to raise residential refuse collection rates for Recology's financial benefit. In the interim, the Office of Contract Administration (OCA) entered into a short-term agreement with Recology to continue to collect refuse from City facilities. The original contract was for an initial term of seven months from December 2020 through June 2021, with an option to extend five months through November 2021, and an amount not to exceed \$5,600,000. In June 2021, OCA executed the First Amendment to the contract, extending the term by five months through November 2021, and increasing the not-to-exceed amount to \$9,900,000. In November 2021, the Board of Supervisors approved the Second Amendment to the contract, extending the term by seven months through June 2022, and increasing the not-to-exceed amount to \$15,622,000 (File 21-1083).

As with the City's prior refuse collection agreements with Recology, the current agreement was awarded as a sole source procurement on the basis that Recology is the only entity permitted to collect residential and commercial refuse in the City (see Refuse Collection & Disposal Ordinance discussion below) and therefore uniquely positioned to provide such services to the City.¹ According to the City's Attorney's Office, the City may nevertheless competitively procure refuse collection services. OCA is requesting the current contract with Recology be extended while it conducts a solicitation for a new contract for the City's refuse collection, with plans to have a

¹ In addition to the waste collection contracts, the City has a Landfill Agreement with Recology that is administered by the Department of the Environment. The Landfill Agreement designates Recology's landfill in Vacaville as the exclusive site for the disposal of all solid waste collected in San Francisco and obligates Recology to operate a transfer station in San Francisco to process waste, separate recyclable and compostable material, and consolidate remaining refuse for transport to the landfill. On April 7, 2022, the Department of the Environment Director resigned after allegations were reported that she had solicited donations from Recology before awarding the Landfill Agreement in 2015 and later a Hazardous Waste Agreement in 2019, which are detailed in the Controller's Office April 8, 2022 Public Integrity Review: San Francisco Department of Environment's Relationship with Recology and Lack of Compliance with Ethics Rules.

new contract in place by July 2024 (see Policy Consideration section below). OCA advertised the solicitation in June 2022.

Refuse Collection & Disposal Ordinance

In 1932, voters approved the Refuse Collection and Disposal Ordinance, which requires refuse collection firms to obtain a license for operations and permits to collect residential and commercial refuse within certain areas of the City.² The regulations do not apply to refuse collection for City facilities, although all refuse collectors within City limits are required to obtain truck permits and licenses. The 1932 Ordinance created 97 permits for refuse collection, which, due to acquisitions since the 1932 Ordinance was approved, are currently all owned by Recology.³

Historically, residential rates were set by the Refuse Rate Board, which consisted of the Public Utilities Commission, City Administrator, and Controller. Rate proposals were evaluated by Public Works during public hearings.

On June 7, 2022 voters approved Proposition F, which made the following changes: (1) restructures the refuse rate-setting process to replace rate hearings before Public Works with a requirement that the Controller, as Refuse Rate Administrator, regularly monitor rates and appear before the Refuse Rate Board to recommend rate adjustments for both residential and non-residential customers; (2) appoint a Ratepayer Representative to replace the Controller on the Refuse Rate Board; (3) require applicants for refuse collection permits to demonstrate their ability to avoid disruptions in service; (4) authorize the Board of Supervisors on recommendation of the Refuse Rate Administrator, Refuse Rate Board, and Mayor to amend the Refuse Ordinance by eight-vote supermajority; and (5) fully codify the Refuse Ordinance in the Health Code (File 22-0052).

The Uniform Commercial Rates for refuse collection, which were the reference rates for the City's 2020 Recology contract, were not regulated prior to the passage of Proposition F but were influenced by the residential rates because of the close proximity of residential and commercial customers. Since 2006, Recology has applied rate increases approved for residential rates to their uniform commercial rates. Historically, uniform commercial rates were typically adjusted each fiscal year. The Refuse Rate Board approved an approximate 5 percent cost of living increase for FY 2022-23 residential refuse collection rates.⁴

Overcharging Customers

In May 2021, the Board of Supervisors approved an ordinance authorizing a settlement agreement with Recology that required Recology to repay customers \$94.5 million and pay civil penalties of \$7 million related to refuse rate increases in 2017 that were based on inaccurate

² The Director of Public Health issues refuse collection licenses.

³ Under the 1932 Ordinance, additional permits for refuse collection may only be granted if 20 percent of the customers within a permit area sign a petition stating that they are inadequately served or if the license of the refuse collector is revoked. Licenses for refuse collection operators may be revoked if the Director of Public Health determines that the refuse collection license holder is not providing adequate service or is overcharging for service.

⁴ The Cost of Living Adjustment (COLA) is based on increases to costs of labor, health and welfare, pensions, renewable diesel, natural gas fuel, materials, and capital. The COLA may be reduced through ratepayer rebates if Recology does not meet waste reduction targets.

information provided by Recology during the 2017 residential refuse rate setting process and to unlawful gifts to City officials (File 21-0329). The settlement also provided for an approximately 6.8% decrease in commercial rates effective April 2021 as well as a decrease in residential refuse rates.

In May 2022, the Controller’s Office issued a Public Integrity Review report finding that Recology had netted \$23.4 million in profits over the allowed 9 percent profit margin from 2018 through 2021, even after payment of the \$101 million settlement. The report recommends: (1) Recology deposit the excess \$23.4 million profits, and any other excess profits found from reviews of prior years, into a balancing account; (2) use the balancing account to offset future rate increases, or to stabilize rates during volatile years; and (3) Recology’s rate reports accurately and timely identify when rates exceed or fall below the allowable amount and promptly adjust the balancing account.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the Third Amendment to the City’s contract with Recology San Francisco, Recology Sunset Scavenger, and Recology Golden Gate (together “Recology”)⁵ increasing the not-to-exceed contract amount by \$23,978,000, for a total not to exceed \$39,600,000, and extending the term by two years through June 2024.

Since the existing contract with Recology expired on June 30, 2022, the proposed resolution should be amended to state that approval of the Third Amendment is retroactive.

Services Provided

The scope of services for the proposed agreement includes the following:

- Collection and processing of refuse (recyclables, compostables, and trash) generated by all City departments within San Francisco city limits
- Refuse bins for both interior and exterior collection
- Identifying opportunities to reduce the level of refuse service and eliminate secondary charges to decrease costs to departments
- Providing reports on recovery rates and non-compliance with proper separation of recyclables, compostables, and trash

City Departments determine the frequency for each site’s refuse collection.

Change in Contract Rates

In the City’s prior contract with Recology, rates were based on the San Francisco Uniform Commercial Rates, with discounts for recycling and composting. The City’s 2020 contract referenced the Uniform Commercial Rates, however, given the anticipated rate setting process to take place this year and thus, the uncertainty around the Uniform Commercial Rates, the proposed Third Amendment no longer references the Uniform Commercial Rates. Instead, it uses

⁵ Recology Sunset Scavenger and Recology Golden Gate are collection companies that service different areas of the city. Recology San Francisco is the company that owns the transfer station and recyclables processing facility where collected material is handled.

the values for the FY 2022-23 Uniform Commercial Rates adjusted by inflation for the first amendment year and allows an escalation by regional inflation in May 2023 for FY 2023-24 (the second amendment year).

FISCAL IMPACT

The proposed Third Amendment would increase the not-to-exceed amount of the contract by \$23,978,000, for a total not to exceed \$39,600,000. Due to the City’s return to in-person work starting November 1, 2021, OCA is using the average monthly spend of \$807,417 from November 2021 through February 2022 as a baseline for future months, and assumes 4.99 percent annual adjustments in future fiscal years, in line with Recology’s commercial rate increase for FY 2022-23. Exhibit 1 below summarizes the expenditures on the existing Recology contract and estimates projected expenditures under the proposed Third Amendment using the average monthly spend of \$807,417 and assuming five percent annual escalation.

Exhibit 1: Actual and Projected Contract Expenditures

Current Not-to-Exceed (through June 2022)	\$15,622,000
Average Monthly Spend (Nov 2021 – Feb 2022)	807,417
FY 2022-23 (Projected)	\$10,173,454
FY 2023-24 (Projected)	10,682,127
<i>Subtotal, Projected Expenditures</i>	<i>\$20,855,581</i>
Contingency (15% of Projected Expenditures)	3,128,337
Total Actual and Projected Expenditures	\$39,605,918

Source: OCA

The proposed not-to-exceed amount includes a 15 percent contingency to account for new refuse collection locations, increased collection frequency, and future rate increases that may exceed five percent.

Sources of funding

The revenues to pay for the proposed agreement with Recology would be funded through the individual City departments’ annual budgets, as approved by the Board of Supervisors. City departments are responsible for creating purchase orders against the agreement.

POLICY CONSIDERATION

As noted above, OCA has issued a competitive solicitation for a new refuse collection contract for City departments, with a goal to have a new contract in place by July 2024. The award of a new contract may require California Environmental Quality Act (CEQA) review, and any new contractor would need refuse collection vehicle permits and licenses to operate in the City. Under CEQA, the Planning Department would determine if the new contract required an Exemption, Negative Declaration, Mitigated Negative Declaration, Environmental Impact Report, or Addendum to prior environmental review. The Planning Department estimates that the timeline would be approximately 1-4 months for an exemption, 9-12 months for a Negative Declaration or Mitigated Negative Declaration, 18-24 months for an Environmental Impact Report, or 3-6

months for an Addendum. If a new contract is in place before July 2024, OCA may terminate this contract early.

As noted above, the Controller's Office has determined that Recology overcharged customers by \$23.4 million above the \$101 million settlement agreement approved by the Board of Supervisors and provided a gifts to the Friends of the Environment in 2015 and 2019 during the Department of Environment's contract negotiations with Recology. The proposed contract extension provides for refuse collection services while options for alternative providers of refuse collection are identified and changes to the service model are evaluated. We therefore recommend approval of the proposed resolution.

RECOMMENDATIONS


1. Amend the proposed resolution to state that approval is retroactive to July 1, 2022.
2. Approve the resolution as amended.

CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292
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June 10, 2022

TO: Government Audit and Oversight Committee

FROM: Budget and Legislative Analyst 

SUBJECT: June 16, 2022 Government Audit and Oversight Committee Meeting

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<p>Item 2 File 22-0544</p>	<p>Department: Municipal Transportation Agency (MTA)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve a new contract for parking meter coin and parking data collection services between SFMTA and LAZ Parking California, LLC for a term of five years, from approximately August 2022 through July 2027, with an option to extend for up to five additional years through July 2032, and an amount not to exceed \$50,798,833. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • Under the proposed contract, LAZ would continue to provide coin collection at all parking meters and information technology and equipment related to coin collection. The contract also adds data collection services to improve the accuracy of demand-responsive parking pricing and optional analysis of the agency’s curb management policies. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • Excluding the contingency amount and optional data services, annual costs for the initial term are \$4.7 million, which exceeds FY 2020-21 actual spending of \$4.2 million by 13.5 percent. Cost increases are due to: (a) an addition of an equipment budget to replace the existing vehicle collection fleet; (b) the addition of new data collection staffing to perform parking studies, and (c) increases in labor rates under the collective bargaining agreement. Coin collection and processing staff remains the same in the proposed contract. • Not including the costs of administrative support staff, new data collection services would be \$1.3 million over the initial term (\$261,000 annually) and \$1.4 million over the extension term for a total of \$2.7 million. Optional data services over the total ten-year term would be \$500,000. • The projected meter coin revenues over the ten-year total contract term are approximately \$51.5 million. After subtracting \$50.8 million in contract costs, the net revenue to the City would be approximately \$0.7 million. • Total net meter revenues for the next ten years, which include coins and credit card payments (\$621.8 million), meter replacement meter maintenance costs previously approved by the Board of Supervisors (File 21-0714, \$123.4 million), and the proposed contract’s costs (\$50.8 million) are approximately \$447.6 million. Net revenues support on-street parking programs and public transit. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

The San Francisco Municipal Transportation Agency (SFMTA) Parking Meter Program manages 26,000 metered spaces between on-street parking and parking lots for SFMTA and the Port of San Francisco (Port). The SFMTA uses demand-responsive pricing to adjust metered parking rates to reduce congestion and allow drivers to find parking more quickly. According to a memo from the SFMTA to the Board of Supervisors dated April 28, 2022, the SFMTA currently collects approximately \$6.2 million in annual parking meter coin revenues and has collected approximately \$180 million since 2012. Parking meter coin revenues support on-street parking programs and public transit. Although parking meter coin revenues have declined over time, providing the option to purchase parking time by coins allows people who do not have a credit card or phone to pay for parking and serves SFMTA's goal to provide equitable transportation services.

Since 1978, the SFMTA has contracted with outside vendors to provide for the collection and counting of parking meter revenues and related support services. In 2012, the Board of Supervisors approved a contract between the SFMTA and Serco, Inc. for parking meter coin collections, counting, and support services for an amount not to exceed \$46.4 million. In 2021, the contract was assigned to LAZ Parking California, LLC (LAZ Parking) after LAZ Parking acquired Serco's coin collection division. The contract will expire on July 31, 2022.

In 2021, SFMTA issued a Request for Proposals (RFP) for coin and data collection services and associated support. LAZ Parking was the only company that submitted a proposal. According to the SFMTA, the SFMTA conducted outreach to the parking industry prior to issuing the RFP and identified four potentially qualified vendors and determined that further outreach and re-advertising the RFP would not result in additional proposals from vendors. SFMTA contract procurement and compliance staff determined that LAZ Parking met minimum qualifications and that the proposal was responsive and authorized SFMTA staff to negotiate a contract with LAZ Parking.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new contract for parking meter coin and parking data collection services between SFMTA and LAZ Parking California, LLC for a term of five years, from approximately August 2022 through July 2027, with an option to extend for up to five additional years through July 2032, and an amount not to exceed \$50,798,833.

Under the proposed contract, LAZ Parking would provide:

- **Coin collection services** for single and multi-space meters;
- **Data collection services (new)**, including data and reporting related to meter condition, occupancy, inventory, parklets, construction sites, signage, and curb regulations (discussed in further detail below);
- **Coin delivery services** from parking meters to a SFMTA counting facility;
- **Support services**, including IT support for coin and data collection parking systems, revenue reconciliation, product support for meter electronic lock software and parking meter repair maintenance application, revenue reconciliation, and other services; and
- **Procurement services**, including procurement of parking meter cards and provision of parking meter support equipment to replace existing equipment that is nearly 10-years old and reaching the end of its useful life according to the April 2022 SFMTA memo. According to Appendix A of the proposed contract, the parking meter support equipment may include coin vaults, coin collection equipment, vehicle equipment and customization, meter equipment and other necessary equipment for coin collection and parking meter management.

New Data Collection Services

The proposed new contract includes new data collection services as well as optional data collection services that are not included in the existing contract. According to the April 2022 SFMTA memo, a new data collection crew will allow for an update to the underlying data used to support occupancy calculations and price changes for demand-responsive parking pricing. According to SFMTA Principal Administrative Analyst Alexiy Sukhenko, demand-responsive parking pricing is based on the block payment rate (i.e., a ratio of all paid time divided by all available parking time) and a computed value of all parked vehicles (paid and unpaid) compared to parked and paid vehicles (i.e., Sensor Independent Rate Adjustment (SIRA) coefficient). The block payment rate is updated throughout the year, but the SIRA coefficients are 10 years old and are based on the SFPark Pilot Program that ended in 2012 resulting in inaccurate estimates of Citywide parking utilization.

In addition, according to the SFMTA, the new data collection crew will enable the collection of more parking data to support strategic policy decisions, such as meter rates and time limits, new metered areas pricing etc., respond to requests for information from elected officials and the public, and support the City's new virtual permitting and pay-by-license plate technology. According to SFMTA Principal Administrative Analyst Sukhenko, new data collection support will conduct block level surveys either by visual observation or by automated license plate recognition technology to facilitate collection of residential parking permits and pay-by-license plate parking census.

The proposed new contract also includes optional data collection services that may be used for researching or conducting analysis for anything beyond current business processes related to

SFMTA curb management according to SFMTA Principal Administrative Analyst Sukhenko. For example, the SFMTA may use these services in cases of:

- new residential parking permits or metered areas of research and development;
- adjustments to residential parking permit zones (such as establishing new zones);
- new curb management policy research (such as establishing a pay or permit zone where residents can park for free, but visitors pay a metered rate);
- metered time limit studies (such as research on average time of stay in different parking areas to determine appropriate parking time limits);
- and other areas of research beyond existing business processes related to curb management.

FISCAL IMPACT

The not-to-exceed amount of the proposed contract is \$50,798,833 over the total ten-year term, which would be funded by the SFMTA’s Operating Budget. The sources and uses of funds are shown in Exhibit 1 below.

Exhibit 1: Proposed Contract Spending

	Proposed Annual Budget	Proposed Initial Term (5 Years)	Extension Term (5 Years)	Total Proposed Term (10 Years)
<i>Fixed Costs</i>				
Management Fees	1,456,200	7,281,000	7,963,098	15,244,098
Meter Maintenance Application	60,000	<u>300,000</u>	<u>330,000</u>	<u>630,000</u>
Subtotal, Fixed Costs	1,516,200	7,581,000	8,293,098	15,874,098
<i>Variable Costs</i>				
Program Management Staff	969,816	4,849,080	5,303,351	10,152,431
Coin Collection Staff	2,001,000	10,005,000	10,942,288	20,947,288
Parking Meter Cards	120,000	600,000	0	600,000
Support Meter Equipment	120,000	<u>600,000</u>	<u>660,000</u>	<u>1,260,000</u>
Subtotal, Variable Costs	3,210,816	16,054,080	16,905,640	32,959,720
<i>Subtotal, Fixed & Variable Costs</i>			\$25,198,738	\$48,833,818
Optional Data Services				500,000
Contingency (3%)				1,465,015
Total	4,727,016			\$50,798,833

Source: Appendix B of the Proposed Contract

Notes: Program Management Staff are non-collective bargaining agreement (CBA) labor includes 7.0 full-time equivalent administrative positions, including: program manager, coin and data collections manager, analyst, office manager, and three supervisors. Coin collection staff (20 FTE) are collective bargaining agreement (CBA) labor hourly rates are set by the CBA between LAZ Parking California, LLC and Teamsters Local 665. The proposed contract

budgeted amount is based on average spending from a six-month period in FY 2021-22 with a 15% increase to adjust for new data collection.

Increase in Annual Spending

Excluding the contingency amount and optional data services, annual costs for the initial term are \$4.7 million, which exceeds FY 2020-21 actual spending of \$4.2 million by 13.5 percent. The total ten-year cost of the new agreement is \$50.8 million or 9.5 percent higher than the \$46.4 million existing ten-year agreement.

Cost increases are due to: (a) an addition of an equipment budget to replace the existing vehicle collection fleet (as discussed above); (b) the addition of new data collection staffing (as discussed above) to perform parking studies, such as occupancy, utilization, and parking census and program management staff, and (c) increases in labor rates under the collective bargaining agreement, which escalate by 3 percent per year during the agreement. Coin collection and processing staff remains the same in the proposed contract.

In addition, fixed costs are decreasing. Management Fees consist of \$1.46 million per year for coin collection, data collection, and support services, which is approximately \$44,000 lower than the current agreement.¹ And software maintenance is decreasing from \$78,605 to \$60,000 per year.

Data Collection and Optional Services

Not including the costs of administrative support staff, new data collection services would be \$1.3 million over the initial term (\$261,000 annually) and \$1.4 million over the extension term for a total of \$2.7 million. Optional data services over the total ten-year term would be \$500,000.

Revenues

According to SFMTA Principal Administrative Analyst Sukhenko, the projected meter coin revenues over the ten-year total contract term are approximately \$51.5 million. After subtracting \$50.8 million in contract costs, the net revenue to the City would be approximately \$0.7 million.

Total net meter revenues for the next ten years, which include coins and credit card payments (\$621.8 million), meter replacement meter maintenance costs previously approved by the Board of Supervisors (File 21-0714, \$123.4 million), and the proposed contract's costs (\$50.8 million) are approximately \$447.6 million. Net revenues support on-street parking programs and public transit.

¹ The existing agreement's annual management fee is \$1.5 million and covers program management staff and non-personnel overhead. The proposed management fee is \$1.46 and only cover non-personnel overhead. Program management staff are budgeted separately in the proposed agreement at an annual cost of \$0.97 million and coin collection and processing staff have an annual cost of \$2 million. Program management and coin collection/processing staff may decrease in future years if coin payments decrease.

RECOMMENDATION

Approve the proposed resolution.

Item 3 File 22-0600	Department: Office of Contract Administration
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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve the contract for biosolids production and management services between Lystek International Limited and the City for a term of five years (from July 2022 through June 2027) and initial amount of \$16.4 million, with one two-year option to extend through June 2029 for an additional \$6.4 million, for a total possible contract duration of seven years and not to exceed amount of \$22.8 million.

Key Points

- The City’s two wastewater facilities, the Southeast Wastewater Treatment Plant and the Oceanside Wastewater Treatment Plant, produce approximately 60,000 wet tons of “Class B” biosolids per year. These biosolids can be used as a fertilizer to improve soil quality. The proposed contract entails the management and conversion of biosolids. SFPUC has increased conversion of biosolids due a change in state law that effectively eliminates sending biosolids to landfills.
- Since the current contract with Lystek expired and could not be extended, OCA released a new solicitation for the same types of biosolids production and management services in March 2022. Lystek International was the only contractor to submit a bid and will continue to provide the same type of biosolids processing services except with the addition of the SynaGro Central Valley Compost site, which was not a part of the previous contract.

Fiscal Impact

- Estimated costs under the proposed contract are approximately \$15.1 million for the first five years of the contract (July 2022 through June 2027), and approximately \$22 million if the Department exercises the two-year extension option through June 2029. The not to exceed amount includes a 3.7 percent contingency to account for higher than budgeted inflation. Costs will be paid for by SFPUC Wastewater Enterprise funds.
- Under the proposed contract, processing costs have increased approximately 55 percent (from an average of \$72 to approximately \$112) due to higher chemical and transportation costs. If operating costs do decrease significantly, as indicated by the regional consumer price index, the Department will consider rebidding the contract after 5 years.

Recommendations

- Amend the proposed resolution to correctly state the not-to-exceed amount of 22,800,000 instead of 22,400,000.
- Approve the proposed resolution.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

Treatment of Wastewater in San Francisco

The City's two wastewater facilities, the Southeast Wastewater Treatment Plant and the Oceanside Wastewater Treatment Plant, produce approximately 60,000 wet tons of "Class B" biosolids per year. These biosolids are used as a fertilizer to improve soil quality. The proposed contract entails the management and conversion of the City's biosolids from "Class B" to "Class A" biosolids. "Class B" biosolids is a designation for treated sewage solids that meets EPA guidelines for use as fertilizer and has undergone treatment to reduce (but not eliminate) pathogens. Class A biosolid products, such as liquid fertilizer or compost, have undergone pathogen elimination and are suitable for sale to a variety of horticultural or agricultural markets. Since 2017, Lystek International, a Canadian waste treatment technology company, has been responsible for the management and conversion of Class B biosolids into Class A. A different contractor, Denali Water Solutions, is responsible for transporting the biosolids to facilities outside of San Francisco after it has been processed at the City's wastewater treatment facilities. The City's contract with Denali Water Solutions LLC is for a three-year term (October 2019 through September 2022) with a not to exceed amount of \$8.7 million.

Previous Contract #63001 for Biosolids Beneficial Reuse Services

In March 2017, the Office of Contract Administration (OCA) released a solicitation for reuse services to either convert Class B biosolids into Class A marketable biosolid products or to process biosolids for energy and/or fuel production.¹

Lystek International submitted a bid and was awarded contract #63001 for the processing and conversion of Class B biosolids into Class A biosolids. In May 2017, the contract was executed with Lystek International for an initial 2-year total period from May 15, 2017 to May 14, 2019 with an initial not-to-exceed amount of \$500,000 and one three-year option to extend. The contract has been modified four times, increasing the not-to-exceed amount to \$5.7 million and extending the contract term to five years total (from May 2017 to May 14, 2022).

Because the current contract expires May 14, 2022, OCA will issue an emergency Purchase Order to pay for services from May 15, 2022 to July 1, 2022. Under contract #63001, Lystek operated the Lystek Fairfield Organic Material Recovery Center (OMRC), which received and processed wet

¹ Biosolids, as a byproduct of wastewater treatment, can also be used as a renewable energy resource.

biosolids from the City's two wastewater treatment plants. Exhibit 1 shows the number of tons of biosolids processed at the site from 2019 through 2021.

Exhibit 1: Tons of Biosolids Processed at the Lystek Fairfield Organic Material Recovery Center under Contract 63001

Year	Tons of Biosolids Processed
2018	11,470
2019	15,081
2020	11,458
2021	25,996
2022	14,373
Total	78,378

Source: OCA and SFPUC

As shown in Exhibit 1 above, the Lystek Fairfield Organic Material Recovery Center received and processed 78,378 combined tons of biosolids from the Oceanside Wastewater Treatment Plant and the Southeast Wastewater Treatment Plant under the contract with Lystek International. The contract has been used to process larger quantities of material each year as the SFPUC shifts away send biosolids to landfills, a practice which Senate Bill 1383 (California's Short-Lived Climate Pollutant Reduction Act) will effectively eliminate (see below).

New Solicitation to Procure Class A Biosolids Production and Management Services

Since the previous contract expired and could not be renewed, OCA released a new solicitation on March 29, 2022 for biosolids production and management services. The solicitation was a low bid solicitation, which means that the contract is awarded based on the lowest price that also meets the minimum requirements. As such, the solicitation was not scored and there were no panel members. Lystek International was the only contractor to submit a bid by the solicitation deadline. OCA staff determined that Lystek International's proposal met the minimum qualifications required by the solicitation and accepted their bid.

The solicitation for proposed contract 63002 required a minimum capacity of at least 35,000 tons of biosolids per year. In response to the solicitation, Lystek International offered two sites with a total annual capacity of 35,000 tons to meet the requirements for increased capacity. There was no minimum capacity requirement for the previous contract 63001.

Required Increase in Biosolids Processing Capacity due to Senate Bill 1383

SB 1383 is a set of regulations which seek to reduce the amount of organic material being sent to landfill. When biosolids are sent to a landfill, in addition to this being a waste of their nutrients, methane gas, a potent greenhouse gas, is produced. Conversely when used as a fertilizer, the nutrients of the biosolids replace fossil fuel-based fertilizers and have been shown to sequester carbon. For these reasons, the SFPUC transitioned away from any management practices which are not in compliance with SB 1383.

According to OCA staff, when contract 63001 was first procured in 2017, Lystek's biosolids management services represented a much smaller part of PUC's overall biosolids management strategy. However, the passage of SB 1383 in 2016 required the state to take additional steps to reduce methane emissions and meet emissions reduction targets, including reducing organic waste being sent to a landfill by 50 percent of the statewide 2014 level by 2020 and by 75 percent in 2025. As a result of SB 1383, the City has transitioned away sending biosolids to landfill and increased processing of biosolids for other uses.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the contract for biosolids production and management services between Lystek International Limited and the City for a term of five years (from July 2022 through June 2027) and initial amount of \$16.4 million, with one two-year option to extend through June 2029 for an additional \$6.4 million, for a total possible contract duration of seven years and not to exceed amount of \$22.8 million. The proposed resolution states the not to exceed amount is \$22.4 million, but that is a typographical error.

Proposed Contract #63002 for Class A Biosolids Production and Management Services

The proposed contract 63002 requires the contractor to provide the same type of biosolids processing services as the prior contract 63001 except with the addition of the SynaGro Central Valley Compost site, which was not a part of the previous contract. Additionally, contract 63002 includes a requirement that the contractor's facilities have a minimum annual capacity of 35,000 wet tons. In the previous contract, there was no minimum annual capacity requirement.

The services provided under the contract are to continue to produce Class A biosolids from Class B biosolids received from the Southeast and Oceanside Wastewater Treatment plants. Lystek International would operate two sites under the contract, described below:

- Lystek Fairfield Organic Material Recovery Center (17,500 wet tons)
 - This site, located at the Fairfield-Suisun Sewer District, transforms biosolids received from the treatment plants into a Class A liquid fertilizer product. Lystek then sells the fertilizer to area farmers.
- SynaGro Central Valley Compost facility (17,500 wet tons)
 - The SynaGro site, located in Merced County, utilizes composting technology to create a composted end product that can be used to promote plant growth.

FISCAL IMPACT

According to Appendix B of the proposed contract, the cost to process biosolids at the Lystek Fairfield site is \$111.73 per wet ton and is \$69.44 per wet ton at the SynaGro compost site. The difference in cost is due to different treatment processes and final products at each site.

Specifically, the Lystek Fairfield OMRC utilizes more expensive and complex technology to produce a liquid fertilizer, whereas the SynaGro CVC facility utilizes less costly composting methods. The SynaGro site is further away from Southeast Wastewater Treatment Plant (284 miles) than the Fairfield site (95 miles), resulting in higher transportation costs to the City, which in turn fully offsets the SynaGro site's lower processing costs. According to Appendix C of the proposed contract, costs may be escalated by regional inflation each year.

Exhibit 2 below summarizes the estimated costs of the first year of contract spending.

Exhibit 2: Projected Costs for the Lystek's Biosolids Management Contract from July 2022 through June 2029

Year	Lystek OMRC	SynaGro	Projected Tons Processed	Total
1	\$1,955,275	\$591,629	26,020	\$2,546,904
2	2,004,157	969,474	31,121	2,973,631
3	2,054,261	1,020,956	31,494	3,075,217
4	2,105,617	1,074,741	31,872	3,180,359
5	2,158,258	1,130,925	32,255	3,289,183
<i>Subtotal, initial term</i>	<i>10,277,568</i>	<i>4,787,726</i>	<i>152,762</i>	<i>15,065,294</i>
6	2,212,214	1,189,608	32,642	3,401,822
7	2,267,520	1,250,891	33,033	3,518,411
Total	\$14,757,301	\$7,228,225	218,437	\$21,985,526

Source: Office of Contract Administration

As shown in Exhibit 2, the estimated costs under the proposed contract are approximately \$15.1 million for the first five years of the contract (July 2022 through June 2027), and approximately \$22 million if the Department exercises the two-year extension option through June 2029. According to OCA staff, the projected costs are only an initial estimate based on the assumption that the downtown City core will return to pre-pandemic population levels and that total tonnage of biosolids will increase 1.2 percent each year of the contract after 2022. The estimates also assume that the costs per ton at each site will increase by 2.5 percent each year based on inflation price adjustments, which are allowed in the contract.

According to Department staff, it is estimated that 17,500 tons will be sent to the Lystek Fairfield facility and 8,520 tons will be sent to the SynaGro facility during the first year of the contract, and that the tons of biosolids sent to the SynaGro facility will increase by 2.6 percent each year until the final year of the contract when SynaGro will eventually be processing 15,930 tons (from July 2028 – June 2029). Overall, the cost estimate projects that a total of 152,762 tons of biosolids will be processed over the course of the initial 5-year term and an additional 65,675 tons would be processed if the 2-year extension option is exercised, for total tonnage of 218,437 from July 2022 through June 2029. Due to the impact of COVID-related population fluctuations, and uncertainty regarding the number of commuters projected to return to the City over the next

few years, OCA cannot provide estimates with certainty.

According to the Department, the remaining \$814,474 in the contract's \$22.8 million not to exceed amount may be needed as a buffer to account for additional potential price adjustments based on the Consumer Price Index (CPI).

Increase in Costs from Prior Contract 63001

According to the Department, \$5,549,668 (out of \$5,700,000 available) was spent under the previous contract for biosolids management for the processing of 78,378 tons of biosolids at the Lystek Fairfield OMRC facility for an average cost per wet ton of \$70.81.²

Under the previous Lystek contract, costs ranged between \$70-73.23 per ton to process at the Lystek Fairfield OMRC site, depending on whether the biosolids were sourced from the Oceanside or Southeast treatment plants.³ Under the proposed contract, processing costs at the Fairfield site have increased approximately 55 percent (from an average of \$72 to approximately \$112). According to Department staff, the cost increase is due to increase in the costs of several components of the service. Potassium hydroxide, a key part of the Lystek process, has increased from \$0.28 to \$0.56 per pound, a 100% increase, from January 2022 to June 2022. The price of transporting liquid fertilizer to ranchers, a responsibility of the contractor, has increased by 55% over 2021 rates due to fuel cost increases and a shortage of drivers. Labor costs as well as propane have also increased. These four items, which have increased in cost since 2017, represent the majority of the contractor's per unit processing costs. If operating costs do decrease significantly, as indicated by the regional consumer price index, the Department will consider rebidding the contract after 5 years.

Funding Source

Contract costs will be paid for by SFPUC wastewater rate payers.

RECOMMENDATIONS

1. Amend the proposed resolution to correctly state the not-to-exceed amount of 22,800,000 instead of 22,400,000.
2. Approve the resolution, as amended.

³ The proposed contract's processing rates are the same for both of the City's wastewater treatment facilities.

<p>Items 4, 5, 6 and 7 Files 22-0601, 22-0602, 22-0603, and 22-0604</p>	<p>Department: Office of Contract Administration (OCA)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolutions would authorize OCA to approve the following contracts with (i) Kemira Water Solutions for the purchase of ferric chloride and ferrous chloride with a not to exceed amount of \$26,000,000 (File 22-0601); (ii) TR International for the purchase of ferric chloride and ferrous chloride for a not to exceed amount of \$28,000,000 (File 22-0602); (iii) Univar Solutions USA Inc. for the purchase of sodium hypochlorite for a not to exceed amount of \$74,000,000. (File 22-0603); and (iv) Univar Solutions USA Inc. for the purchase of sodium bisulfite a not to exceed amount of \$19,000,000. (File 22-0604). <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • Ferric chloride, ferrous chloride, sodium hypochlorite, and sodium bisulfite are required to process wastewater and water at facilities operated by the San Francisco Public Utilities Commission (SFPUC) and the Airport. • The Office of Contract administration procured the proposed contracts with competitive solicitations. Contracts were awarded to the lowest cost bids. Out of a total of two bidders, Univar Solutions USA Inc. (Univar) provided the lowest bid, and therefore was selected to be the supplier for sodium hypochlorite. Univar also provided the only bid for sodium bisulfite. Out of a total of two bids, Kemira Water Solutions provided the lowest bid, and therefore was selected to the primary awardee of ferric chloride and ferrous chloride. TR International was selected as the secondary awardee of ferric chloride and ferrous chloride. According to OCA, the reason there may have been a low number of bidders is because of the current state of the supply chain, such as the instability of chemical raw materials and increased fuel and transportation costs, has constrained potential vendors delivery capacity. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The proposed not-to-exceed amounts are projections based on the bid amounts of each vendor multiplied by the total number of contract years (seven), rounded to the nearest million. Bid amounts are based on the City’s estimated annual quantity for each chemical and the price per gallon for each delivery location. Cost will be funded by the Water and Wastewater Enterprises and the Airport. • Prices for these chemicals increased by 23 to 142 percent between the current and proposed contracts. The proposed contracts allow price changes based on the relevant Producer Price Indexes (PPI) prepared by the Bureau of Labor Statistics every six months for the first two years of each contract and then annually thereafter. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolutions. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

Pursuant to Chapter 21 of the Administrative Code, the Office of Contract Administration (OCA) selects commodity and general services¹ suppliers through a low-bid solicitation process (instead of a Request for Proposal) to provide multiple chemicals used for the City's wastewater and water treatment process. In a low-bid solicitation, the vendor with the lowest bid price is awarded the contract. In March 2022, OCA issued an invitation for bids for the purchase of multiple chemicals² for the City's wastewater and water treatment process, which includes ferric and ferrous chloride, sodium hypochlorite, and sodium bisulfite. A total of fifteen contracts were awarded. Four contracts (the proposed resolutions) for sodium hypochlorite, sodium bisulfite and ferric ferrous chloride exceeded \$10 million, and therefore, required Board of Supervisors' approval.

Procurement Results

Out of a total of two bidders, Univar Solutions USA Inc. (Univar) provided the lowest bid, and therefore was selected to be the supplier for sodium hypochlorite. Univar also provided the only bid for sodium bisulfite. Out of a total of two bids, Kemira Water Solutions provided the lowest bid, and therefore was selected to be the primary awardee of ferric chloride and ferrous chloride. TR International was selected as the secondary awardee of ferric chloride and ferrous chloride. According to OCA, the primary awardee is the first source for the awarded goods, and the secondary awardee is a backup source. In the event the primary awardee fails to provide ferric ferrous chloride in accordance with the contract terms, the secondary awardee will then be required to provide the chemical until the primary awardee is ready and able to provide the chemicals.

Low Number of Bidders

According to OCA, the reason there may have been a low number of bidders is because of the current state of the supply chain, such as the instability of chemical raw materials and increased fuel and transportation costs, has constrained potential vendors delivery capacity. In addition, a

¹ The chemicals of the proposed contracts fall under the "commodity and general services" definition. As defined in Chapter 21, "commodity" shall specifically exclude legal and litigation related contracts or contracts entered into pursuant to settlement of legal proceedings, and employee benefits, including, without limitation, health plans, retirement or deferred compensation benefits, insurance and flexible accounts, provided by or through the City's Human Resources Department or the Retirement Board. "General Services" shall mean those services that are not Professional Services. General services include, but are not limited to, janitorial, security guard, pest control, parking lot management, and landscaping services.

² Ferric Ferrous Chloride, Sodium Hypochlorite, Sodium Hydroxide, Hydrofluosilicic Acid, Sodium Bisulfite, Aluminum Sulfate, Calcium Thiosulfate, Sulfuric Acid, Citric Acid, Antiscalant, GreenClean Liquid 5.0 Algaecide, Lime and Sodium Hypochlorite Small Sites

bidder who is a chemical distributor may not want to bid if the bidder knows the chemical manufacturer is also submitting a bid.

Prior to the solicitation, OCA and PUC formed created a Chemical Working Group with staff from SFPUC to develop a procurement strategy. The solicitation provided information to bidders that was not provided in previous solicitations such as for each location providing the number of storage tanks, storage capacity, number of deliveries and volume per delivery so bidders had more information to better forecast numbers on their end to submit a bid. OCA reports that it reached out to 24 bidders and followed up periodically with all bidders.

DETAILS OF PROPOSED LEGISLATION

The proposed resolutions would authorize OCA to approve the following contracts for the purchases of multiple chemicals:

1. **File 22-0601:** Kemira Water Solutions for the purchase of ferric ferrous chloride with an initial not to exceed amount of \$11,200,000 for three years, and \$14,800,000 for an extension option of four additional years. The proposed total not to exceed amount is \$26,000,000.
2. **File 22-0602:** TR International for the purchase of ferric ferrous chloride with an initial not to exceed amount of \$12,000,000 for three years, and \$16,000,000 for an extension option of four additional years. The proposed total not to exceed amount is \$28,000,000.
3. **File 22-0603:** Univar Solutions USA Inc. for the purchase of sodium hypochlorite with an initial not to exceed amount of \$32,000,000 for three years, and \$42,000,000 for an extension option of four additional years. The proposed total not to exceed amount is \$74,000,000.
4. **File 22-0604:** Univar Solutions USA Inc. for the purchase of sodium bisulfite with an initial not to exceed amount of \$8,000,000 for three years, and \$11,000,000 for an extension option of four additional years. The proposed total not to exceed amount is \$19,000,000.

All four of the proposed contracts have a total term of seven years from July 1, 2022 through June 30, 2029.

Goods Provided

The vendors will supply and deliver ferric chloride and ferrous chloride³, sodium hypochlorite⁴ and sodium bisulfite⁵ to the City. These chemicals are required to process wastewater and water at facilities operated by the San Francisco Public Utilities Commission (SFPUC) and the Airport. The chemicals are used for the City's drinking water treatment process, wastewater disinfection process, and water disinfection process to meet drinking water regulations. Exhibit 1 shows the estimated annual quantity of chemicals and delivery locations for each vendor.

³ Ferric chloride and ferrous chloride are used for the City's drinking water treatment process and controls odor, and manage sludge in the wastewater treatment process

⁴ Sodium hypochlorite is used to disinfect water to meet drinking water regulations.

⁵ Sodium bisulfite is used to remove residual chlorine in the wastewater disinfection process.

Exhibit 1: Summary of Estimated Annual Quantity of Chemicals and Delivery Locations by Vendor

Vendor	Chemical	Estimated Annual Quantity	Delivery Locations
Kemira Water Solutions (File 22-0601)	Ferric and ferrous chloride	1,270,700 gallons	Southeast Plant, Oceanside Plant, Northpoint Facility, Griffith Pump Station, Harry Tracy Water Treatment Plant, Mel Leong Treatment Plant at SFO Airport
TR International (File 22-0602)	Ferric and ferrous chloride	No estimated annual usage for secondary awardee	Southeast Plant, Oceanside Plant, Northpoint Facility, Griffith Pump Station, Harry Tracy Water Treatment Plant, Mel Leong Treatment Plant at SFO Airport
Univar (File 22-0603)	Sodium hypochlorite	5,683,200 gallons	Northpoint Facility, Channel Street Pump Station, Southeast Plant, Oceanside Plant, Treasure Island Plant, University Mound Reservoir, Harry Tracy Water Treatment Plant, Tesla Treatment Plant, Sunol Valley Treatment Plant, Sunol Valley Chloramination Facility, Site 3100, Pulgas Dechloramination Facility, Mel Leong Treatment Plant at SFO Airport, Merced Manor Reservoir – Central Pump Station, Millbrae Yard, F Street Well and Treatment Facility
Univar (File 22-0604)	Sodium bisulfite	1,347,900 gallons	Northpoint Facility, Southeast Plant, Pulgas Dechloramination Facility, Treasure Island Plant, Sunol Valley Chloramination Facility, and Oceanside Plant

Source: OCA and Contract Documents

According to OCA, the estimated annual volume of each chemical is based on usage reports from the previous year and analysis of historical data and unpredictable factors such as rain and drought which would dictate the amount of chemicals used at the wastewater and water treatment facilities. We were provided usage reports from the Wastewater Enterprise but not Water Enterprise so we could not verify the actual usage amount of the chemicals. The proposed term contracts set terms and prices for chemical purchases; they do not require ongoing purchases.

Performance measures and outcomes are not tracked nor required for the proposed contracts.

FISCAL IMPACT

Exhibit 2 below shows a summary of the bid and total not-to-exceed amounts of the four proposed contracts. The proposed not-to-exceed amounts are projections based on the bid amounts of each vendor multiplied by the total number of contract years (seven), rounded to the

nearest million. Bid amounts are based on the City's estimated annual quantity for each chemical and the price per gallon for each delivery location. According to OCA, it is the department's practice to round up the proposed contract amount. The not-to-exceed amounts are not a guarantee that the City will buy the proposed total amount of chemicals but is a not-to-exceed limit.

Exhibit 2: Summary of Proposed Contract Bid and Not-to-Exceed Amounts (Files 22-0601, 22-0602, 22-0603, and 22-0604)

Vendor	Chemical	Bid Amount	Total Not-to-Exceed Amount
Kemira Water Solutions (File 22-0601)	Ferric and ferrous chloride	\$3,709,409	\$26,000,000
TR International (File 22-0602)	Ferric and ferrous chloride	3,985,256	28,000,000
Univar (File 22-0603)	Sodium hypochlorite	10,529,184	74,000,000
Univar (File 22-0604)	Sodium bisulfite	2,638,893	19,000,000

Source: OCA

Funding sources are operating funds from SFPUC's Water Enterprise and Wastewater Enterprise, as well as operating funds from the Airport. SFPUC operating funds are funded by utility ratepayers (water and wastewater customers). Airport operating funds are from revenue collected by Airport tenants, concessions, and parking. According to OCA, if prices for the chemicals improve, OCA will rebid all contracts in three years.

Change in Chemical Costs

The proposed contracts for ferric chloride, ferrous chloride, and sodium bisulfite show significant cost increases for each chemical, summarized below in Exhibit 3.

Exhibit 3: Current and Proposed Chemical Prices

Chemical	Unit	Current Price	Proposed Price	\$ Change	% Change
Ferric chloride	Ton	\$1,119.91	\$2,715.24	\$1,595.33	142%
Ferrous chloride	Ton	\$1,071.13	\$1,406.24	\$335.11	31%
Sodium bisulfite	Ton	\$1,485.00	\$1,832.60	\$347.60	23%
Sodium hypochloride	Dry Pound	\$0.956	\$1.51	\$0.55	58%

Source: Current and Proposed Contracts

Note:

As shown above, chemical prices in each contract increased by 23 to 142 percent. According to OCA, this is because chemical prices are influenced by many factors including but not limited to, increased use of sodium bisulfite in food and beverage production, inflation in energy, transportation and shipping costs, plant shutdowns due to supply shortages.

The proposed contracts allow price changes based on the relevant Producer Price Indexes (PPI) prepared by the Bureau of Labor Statistics every six months for the first two years of each

contract and then annually thereafter. Given the volatility and escalation in these chemical prices, SFPUC and OCA have revised the price adjustment formula that will allow the City to address fluctuations every six months rather than annually, updated invoicing and delivery procedures for the supply of chemicals and will award a Secondary Contractor (TR International) for ferric chloride and ferrous chloride if the Primary Contractor (Kemira) fails to ensure a stable supply of reasonably priced chemicals.

RECOMMENDATION

Approve the proposed resolutions.

Item 8
File 22-0599

Department: Office of Contract Administration (OCA)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve the fifth amendment to the contract between OCA and Professional Contractor Supply for the purchase of hardware supplies for City Departments, increasing the total not-to-exceed contract amount by \$4,000,000 from \$7,500,000 to \$11,500,000, with no change to the contract term of August 15, 2017 through July 14, 2025.

Key Points

- On August 15, 2017, OCA entered into an as-needed contract with Professional Contractor Supply for hardware supplies. The original contract was awarded following a competitive process for a not-to-exceed amount of \$3,000,000, and a term of three years, from August 15, 2017 through July 14, 2020.
- The contract has been amended four times, most recently on July 27, 2021, extending the contract by four years for a new total contract term August 15, 2017 through July 14, 2025; increasing the not-to-exceed amount to \$7,500,000; and allowing for Catalog Prices Increases.
- As a result of this contract, City Departments are offered a range of equipment and supplies for purchase at a catalog discount price rate that ranges from 28-44 percent off the list price for a particular good

Fiscal Impact

- City Departments use this contract on an as-needed basis based on their business needs and available funding.
- From August 15, 2017 through April 15, 2022, \$6.8 million of the contract's \$7,500,000 not-to-exceed amount has been spent. The average monthly spend is \$122,282, and there are 38 months remaining in the contract, therefore an estimated \$4.6 million more will be spent from April 15, 2022 through the contract term end date of July 14, 2025. Given this calculation, the OCA proposes increasing the contract not-to-exceed amount by \$4,000,000.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

On May 5, 2017, the Office of Contract Administration (OCA) issued an invitation for bids for an as-needed Hardware Supplies term contract (TC89400). Two out of three of the bidders, one of whom was Professional Contractor Supply, were deemed qualified and selected based on their low bids on 24 items.

On August 15, 2017, OCA entered into a contract with Professional Contractor Supply for hardware supplies. The original contract not-to-exceed amount was \$3,000,000 for a term of three years, from August 15, 2017 through July 14, 2020. The contract has been amended four times, as summarized below:

- Modification No. 1 (August 6, 2019): Allowed for Catalog Price Increases.
- Modification No. 2 (April 22, 2020): Allowed for the contract term to be extended one year, from July 14, 2020 to July 14, 2021; increased contract not-to-exceed amount by \$1,500,000 from \$3,000,000 to \$4,500,000; and updated contract terms to incorporate updates to the City Municipal Code.
- Modification No. 3 (October 27, 2020): Allowed for an increase in the contract not-to-exceed amount from \$4,500,000 to \$5,500,000
- Modification No. 4 (July 27, 2021): Allowed for a contract end date extension by four years for a new total contract term August 15, 2017 through July 14, 2025; Increased the not-to-exceed amount from \$5,500,000 to \$7,500,000; and allowed for Catalog Prices Increases.

As a result of this contract, City Departments are offered a range of equipment and supplies for purchase at a catalog discount price rate that ranges from 28-44 percent off the list price for a

particular good.¹ For example, an “18 Gauge Shear” that has a list price of \$329.16 would cost a City Department 39 percent less, or \$200.79.²

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the fifth amendment to the contract between OCA and Professional Contractor Supply for the purchase of hardware supplies for City Departments, increasing the total not-to-exceed contract amount by \$4,000,000 from \$7,500,000 to \$11,500,000, with no change to the contract term of August 15, 2017 through July 14, 2025.

FISCAL IMPACT

City Departments use this contract on an as-needed basis based on their business needs and available funding. As the contract with Professional Contract Supply approaches less than 30 percent remaining balance, OCA reevaluates whether the capacity, including the term length and not-to-exceed amount, should be increased.

From August 15, 2017 through April 15, 2022, \$6.8 million of the contract’s \$7,500,000 not-to-exceed amount has been spent. The average monthly spend is \$122,282, and there are 38 months remaining in the contract, therefore an estimated \$4.6 million more will be spent from April 15, 2022 through the contract term end date of July 14, 2025. Given this calculation, the OCA proposes increasing the contract not-to-exceed amount by \$4,000,000. See Exhibit 1 below.

¹ HVAC Equipment and Supplies, Pipes, Valves and Fittings, Hand Tools, Power Tools, Power Tool Supplies and Accessories, Material Handling, storage and Packaging, Safety and Security Supplies, Personal Protective Equipment, Electric Equipment and Supplies, Hardware and Fasteners, Batteries and Flashlights, Pumps and Plumbing Supplies, Pneumatic Tools and Supplies, Welding and Soldering Supplies, Outdoor Garden Equipment and Supplies, Paint, Lubricants, Sealants, Accessories, Metal Working and Machine Cutting Tools, Absorbents, Locks, Padlocks and Door Parts, Emergency Preparedness, Construction and Building Materials, and Cement

² Appendix A to Citywide Hardware Supplies Contract Modification No. 4. Modification No. 4 increased catalog prices effective July 27, 2021.

Exhibit 1. Citywide Hardware Supplies Contract with Professional Contractor Supply Usage Calculations

Total Spend to Date	\$6,847,8112
Months Since Contract Start Date (August 15, 2017), as of April 2022	56
Monthly Spend	\$122,282
Annual Spend	\$1,467,388
Number of Months Remaining (July 14, 2025)	38
Monthly Spend * Number of Months Remaining:	\$4,646,730
Less Current Balance:	\$652,188
Total Additional Funds Needed:	\$3,994,541

Source: OCA

Annual spending increased from \$1,055,542 in FY 2020-21 to \$4,036,095 to date in FY 2021-22. The increase in spending is primarily driven by purchases from MTA and PUC.

RECOMMENDATION

Approve the proposed resolution.

Item 9 File 22-0537	Department: San Francisco Public Utility Commission
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed ordinance extends delegation of authority to enter into grant agreements under the SFPUC's Green Infrastructure Grant Program to the SFPUC General Manager by two years through July 1, 2024. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The San Francisco Public Utilities Commission (SFPUC) Green Infrastructure Program awards grants of up to \$2 million to owners of properties of at least 0.5 acres with large, impervious areas to implement vegetation, soils, and other elements to soak up and store stormwater to support water conservation and reduce stormwater drainage. The maximum grant award is \$2 million. Grant recipients are required to maintain the green infrastructure for 20 years with the SFPUC authorized to conduct project inspections • The proposed ordinance incorporates changes to the program since the prior Board approval in June 2020. The ordinance increases the maximum cost per acre of stormwater managed from \$765,000 to \$930,000 with no change to total maximum grant award of \$2 million). Previous grants are amended to allow recipients to seek additional funding for unforeseen conditions during construction. The ordinance approves an increase in planning and design costs from 20% to 30% of total grant award. In addition to property owners, for-profit or nonprofit entities, individuals, or governmental entities may now apply for funding. Finally, grants will be awarded through a competitive application cycle, as opposed to a first come, first serve basis. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The Board of Supervisors authorized \$12 million in Sewer System Improvement Program funds in the SFPUC FY 2018-19 capital budget, funded by Wastewater Revenue Bonds. Since implementation of the Green Infrastructure Program, SFPUC has awarded \$11.5 million in grants (including contingencies) and spent \$450,000 on program costs, with \$26,346 in remaining funds. • SFPUC will allocate \$20,317,000 in new Green Infrastructure funds to the program, of which \$10,000,000 was appropriated in the FY 2022-23 capital budget and \$10,317,000 in the FY 23-24 capital budget. The source of funding is Wastewater Revenue Bonds. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Because the proposed extension of delegation of authority is consistent with prior Board of Supervisors actions, we recommend approval. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

The City has a combined sewer and stormwater system, and during periods of high rainfall, stormwater drainage can overwhelm the sewer system. The San Francisco Public Utilities Commission (SFPUC) Green Infrastructure Program awards grants of up to \$2 million to owners of properties of at least 0.5 acres with large, impervious areas to implement vegetation, soils, and other elements to soak up and store stormwater to support water conservation and reduce stormwater drainage. Examples of such projects include replacing impervious surfaces with permeable pavement and rain gardens and constructing vegetated roofs. To be eligible, a proposed project must be capable of capturing runoff from storms with rainfalls that exceed the 90th percentile or 0.75-inch total depth. SFPUC enters into 20-year grant agreements with property owners, which require the property owners to maintain the green infrastructure during the term of the agreements.

In February 2019 the Board of Supervisors authorized the San Francisco Public Utilities Commission (SFPUC) to make grants to owners of San Francisco properties with large, impervious areas to construct green infrastructure projects on their parcels, using vegetation, soils, and other elements and practices that mimic nature to soak up and store stormwater (File 18-1113, Ordinance 26-19). The ordinance authorized the SFPUC General Manager to approve agreements with terms of up to 20 years without further approval of the Board of Supervisors. Funding for the program was provided through SFPUC’s Green Infrastructure Program for grants up to \$2 million. In June 2020, the Board of Supervisors amended the ordinance (File No. 20-0454) to extend the SFPUC General Manager’s authority for an additional two years through July 1, 2022 and authorized the General Manager to execute new agreements without requiring prior approval by the SFPUC Commission at a public hearing. The ordinance required the SFPUC to submit quarterly written reports to the Board of Supervisors summarizing the grant agreements the SFPUC has entered into during the prior quarter.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance extends delegation of authority to enter into grant agreements under the SFPUC’s Green Infrastructure Grant Program to the SFPUC General Manager by two years through July 1, 2024.

The maximum term of these grant agreements is 20 years from the time of the project completion date, as defined in the grant agreement. The SFPUC will still be required to submit quarterly reports to the Clerk of the Board of Supervisors summarizing agreements the SFPUC

has entered into during the prior quarter. Grant recipients are required to maintain the green infrastructure for 20 years with the SFPUC authorized to conduct project inspections and to claim remedies should grantees fail to maintain the project for the full term of the agreed upon project period.

The proposed ordinance incorporates several additional changes to the program since the prior Board approval in June 2020. The ordinance increases the maximum cost per acre of stormwater managed from \$765,000 to \$930,000 to account for inflation. (There is no change to total maximum grant award of \$2 million). Previous grants are amended to allow recipients to seek additional funding for unforeseen conditions during construction. The ordinance approves an increase in planning and design costs from 20% to 30% of total grant award. In addition to property owners, for-profit or nonprofit entities, individuals, or governmental entities may now apply for funding. Finally, grants will be awarded through a competitive application cycle, as opposed to a first come, first serve basis.

Performance monitoring

SFPUC has provided a summary of actions undertaken to date by SFPUC of performance review and verification that grant funds are being properly allocated and properly spent, as shown in Exhibit 1. According to Ms. Sarah Bloom (Senior Watershed Planner), expenditure verification is not conducted until the 2nd grant payment request for construction funds. Projects in the design phase are required to submit interim plans for SFPUC review.

Exhibit 1: Program oversight

Project Name	Verification activities to Date
Lafayette Elementary School	Proof of paid invoices, final construction inspection; annual maintenance inspection
St. Thomas More School	Review of interim design submittals
Bessie Carmichael Middle School	Proof of paid invoices, final construction inspection, annual maintenance inspection
Lycee Francais SF Ortega Campus	Proof of paid invoices, interim construction inspections
Holy Trinity Greek Orthodox Church	Progress check ins with grant teams, working towards first design submittal
Crocker Amazon Park	Progress check ins with grant teams, working towards first design submittal
St. Thomas the Apostle	Progress check ins with grant teams, working towards first design submittal
St. Monica Catholic Church	Progress check ins with grant teams, working towards first design submittal
St. Anne of the Sunset	Review of interim design submittals
St. Emydius Church and School	No expenditures paid yet, execution of grant agreement in progress
Church of the Visitacion	No expenditures paid yet, execution of grant agreement in progress

FISCAL IMPACT

The Board of Supervisors authorized \$12 million in Sewer System Improvement Program funds in the SFPUC FY 2018-19 capital budget, funded by Wastewater Revenue Bonds. Since implementation of the Green Infrastructure Program, SFPUC has awarded \$11.5 million in grants (including contingencies) and spent \$450,000 on program costs, with \$26,346 in remaining funds. Exhibit 2 shows the sources and uses of total program funding and awards.

Exhibit 2: Sources and Uses SFPUC GI Grant Program (FY20-22)

Sources:	
Sewer System Improvement Program	\$12,000,000
Total Sources:	\$12,000,000
Uses:	
Lafayette Elementary School	\$487,891
St. Thomas More School	\$1,118,958
Bessie Carmichael Middle School	\$428,075
Lycee Francais SF Ortega Campus	\$480,985
Holy Trinity Greek Orthodox Church	\$1,577,161
Crocker Amazon Park	\$859,151
St. Thomas the Apostle	\$724,227
St. Monica Catholic Church	\$641,413
St. Anne of the Sunset	\$1,557,898
St. Emydius Church and School	\$873,136
Church of the Visitation	\$1,727,103
<i>Grant Subtotal</i>	<i>\$10,475,998</i>
<i>Grant Contingency (10%)</i>	<i>\$1,047,600</i>
Project Management Consultant	\$371,655
SFPUC Labor	\$78,401
<i>Administrative Subtotal</i>	<i>\$450,056</i>
Total Uses	\$11,973,654
Remaining Program Balance	\$26,346

SFPUC will allocate \$20,317,000 in new Green Infrastructure funds to the program, of which \$10,000,000 was appropriated in the FY 2022-23 capital budget and \$10,317,000 in FY 23-24 capital budget. The source of funding is Wastewater Revenue Bonds. Exhibit 3 shows the \$20.3 million funding allocation in FY 2022-23 and FY 2023-24, of which \$0.5 million is for program costs and \$19.7 million is allocated to grants and contingencies.

Exhibit 3: Projected Sources and Uses of SFPUC GI Grant Program (FY22-24)

Sources:	
Wastewater Revenue Bonds (new allocation)	\$20,317,000
Rollover Funds from Prior Years	\$26,346
Total Sources:	\$20,343,346
Uses:	
Project Management Consultant	\$450,000
SFPUC Labor	\$100,000
<i>Administrative Subtotal</i>	<i>\$550,000</i>
Total Projected Uses	\$550,000
Total Projected Available Grant Funds	\$19,793,346

RECOMMENDATION

Because the proposed extension of delegation of authority is consistent with prior Board of Supervisors actions, we recommend approval.

<p>Item 15 File 22-0554</p>	<p>Department: Police Department (POL)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution authorizes the Director of Property, on behalf of the Police Department, to amend the lease of real property located at 750 and 752 Vallejo Street with Evans Investment Partners, LLC, at a base rent of \$120,792 per year and extends the term of the lease for five years for a total term of August 15, 2017 through August 15, 2027. In addition, the proposed amended lease adds two additional five-year options to extend the lease at 95 percent fair market rental value and allows for tenant improvements not to exceed cost to the City of \$241,582. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The City has an existing lease with Evans Investment Partners, LLC for a portion of the building located at 752 Vallejo Street, next to Central Station, which is used by 10 Police investigators. The Police Department desires to extend and expand the existing leased site to include 750 Vallejo Street to provide sufficient office space for 12 other investigative unit personnel who have been located in the Central Station squad room on a temporary basis. • Under the proposed amended lease, the landlord will provide a tenant improvement allowance of \$25,800 for the expansion and the City will pay for additional tenant improvements up to \$241,582, for a total of up to \$267,382 in tenant improvements. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • Base rent starts at \$120,792 and escalates by 3 to 5 percent annually. Total annual costs, including base rent, taxes, maintenance, and utilities starts at \$158,561. Rent and operating costs for the five-year term would be \$837,583. Costs are paid by the General Fund. • The proposed base rent of \$47 per square foot is less than the current base rent of \$58.48, which provides approximately \$150,000 in savings over five years and offsets the City’s tenant improvement costs of \$241,582. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> • The City’s Ten-Year Capital Plan for Fiscal Years 2022-2031 notes that Central Station is “functionally inadequate” and recommends that it be replaced. The estimated replacement cost is \$75 million and states that it will likely be funded by a future earthquake and emergency response (ESER) safety general obligation bond. • Real Estate reports it has requested an updated to March 2021 appraisal, which will be ready prior to the June 16, 2022 Government Audit and Oversight meeting. <p style="text-align: center;">Recommendations</p> <ol style="list-style-type: none"> 1. Request the Capital Planning Committee, Public Works, and the Police Department ensure that the Central Station Replacement plan include sufficient space for investigative staff to allow the City to terminate this lease once the new station is fully developed. 2. Approve the proposed resolution, subject to the findings of the pending appraisal report. 	

MANDATE STATEMENT

Administrative Code Section 23.27 states that the Board of Supervisors shall approve all leases on behalf of the City as tenant by resolution for which the term is longer than a year and costs over \$15,000 per month.

BACKGROUND

Current Lease

The City, on behalf of the Police Department, has an existing lease with Evans Investment Partners, LLC for a portion of the building located at 752 Vallejo Street that is dated May 1, 2017 to provide office space for the investigative unit of Central Station. The leased premises are 750 square feet. The rent of the current lease is \$58.48 per square foot per year. The site is adjacent to Central Station and is separated by Emery Lane. The existing lease will expire on August 15, 2022.

The Police Department desires to extend and expand the existing leased site by an additional 1,820 square feet to include 750 Vallejo Street for a total of 2,570 square feet to provide sufficient office space for investigative unit personnel who have been located in the Central Station squad room on a temporary basis. This will provide additional space and privacy for investigators and allow officers to use the squad room for line-ups and briefings.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution authorizes the Director of Property, on behalf of the Police Department, to amend the lease of real property located at 750 and 752 Vallejo Street with Evans Investment Partners, LLC, at a base rent of \$120,792 per year and extends the term of the lease for five years for a total term of August 15, 2017 through August 15, 2027. In addition, the proposed amended lease adds two additional five-year options to extend the lease at 95 percent fair market rental value and allows for tenant improvements not to exceed cost to the City of \$241,582.

Lease Details

Exhibit 1 below shows the proposed lease terms.

Exhibit 1: Proposed Lease Terms

Premises	First floor of 750 and 752 Vallejo Street
Rental area	2,570 square feet
Base rent	\$47.00 per square foot per year (\$120,790 annually)
Base rent adjustments	Three percent per year, based on regional inflation
Term start and end	August 15, 2017 through August 15, 2027
Options to extend	Two additional five-year options to extend
Utility costs	Paid by landlord, except for separately metered utilities
Janitorial Services	Paid by City
Real Estate Taxes & Building Operating Costs	24.05% of Real Estate Taxes and Building Operating Costs Paid by City

Source: Real Estate Division

Consistent with the current lease, the proposed lease stipulates that the Landlord will pay for utilities for the building, except for any separately metered utilities, which are to be paid by the City. The lease also requires that the City pay a portion of the real estate taxes and building operating costs based on the proportion of square footage of the leased premises compared to the building overall, which is increasing due to the expansion.

Tenant Improvements

Under the proposed amended lease, the landlord will provide a tenant improvement allowance of \$25,800 for the expansion (\$14.18 per square foot), and the City will pay for additional tenant improvements up to \$241,582, for a total of up to \$267,382 in tenant improvements. According to Jeff Suess, Senior Real Property Officer at the Real Estate Division, tenant improvements would include 2 new ADA restrooms, 2 offices, HVAC, paint and carpet, life safety systems, 12 workstations, rolling shutter for front entrance, ballistic panels and associated soft costs, and be completed within 30 to 60 days of execution of the proposed amended lease, depending on the availability of contractors and supplies.

Site Appraisal

The Real Estate Division obtained an appraisal from Colliers International Valuation and Advisory Services which determined that the proposed rent of \$47 per square foot per year was consistent with fair market rent as of March 2021.

Site Use

The Police Department plans to use the expanded site as additional office space for the Investigative Unit. The Police Department currently has 10 officers at the site and will move the remaining 12 officers temporarily located in the Central Station squad room if the proposed amended lease is approved. The space use of 117 square foot per officer is reasonable.

FISCAL IMPACT

The proposed resolution authorizes the lease of 750 and 752 Vallejo Street to the City for a base rent of \$120,792 annually, or \$47.00 per square foot per year. Exhibit 2 shows a breakdown of the rent and associated costs with the lease of the site:

Exhibit 2: Annual Base Rent and Operating Costs for 750 and 752 Vallejo Street Lease

Item	Cost
Rent	\$120,792
Real Estate Taxes & Building Maintenance	\$22,092
Janitorial & Security	\$7,967
Utilities	\$7,710
Total	\$158,561

Source: Real Estate Division.

As shown in Exhibit 2 above, the total annual costs for the proposed lease are \$158,561. The proposed lease increases rent annually by three percent. Therefore, the rent and operating costs for the five-year term would be \$837,583, assuming service costs escalate at three percent annually and real estate taxes escalate at two percent annually. If the two five-year options to extend are exercised, we estimate the costs for the option term would be between \$2,055,377, for a total cost of \$2,892,960. The proposed lease costs are funded by the General Fund within the Police Department’s Operating budget.

Change in Base Rent and Total City Costs

The proposed base rent of \$47 per square foot is less than the current base rent of \$58.48, which provides approximately \$150,000 in savings over five years and offsets the City’s tenant improvement costs of \$241,582.

POLICY CONSIDERATION

Central Station Replacement

The City’s Ten-Year Capital Plan for Fiscal Years 2022-2031 notes that Central Station is “functionally inadequate” and recommends that it be replaced. The estimated replacement cost is \$75 million and states that it will likely be funded by a future earthquake and emergency response (ESER) safety general obligation bond. The most recent ESER bond authorization, \$628

million for 2020 ESER bonds (Files 20-1294 & 20-1295) did not include Central Station in the project list but did include funding for Taraval and Ingleside Stations.

We recommend the Board of Supervisors request the Capital Planning Committee, Public Works, and the Police Department ensure that the Central Station Replacement plan include sufficient space for investigative staff to allow the City to terminate this lease once the new station is fully developed.

Appraisal

Administrative Code Section 23.27 states that an appraisal is required for all City-as-tenant leases if the cost per square foot is more than \$45 and that such appraisals be completed within nine months prior to when the legislation approving the lease is submitted to the Board of Supervisors. The date of the appraisal for 752 Vallejo is March 5, 2021 or 14 months prior proposed resolution's May 2022 introduction date. For this reason, we consider approval to be a policy matter for the Board of Supervisors. Real Estate reports it has requested an updated to the appraisal, which will be ready prior to the June 16, 2022 Government Audit and Oversight meeting.

RECOMMENDATIONS

1. Request the Capital Planning Committee, Public Works, and the Police Department ensure that the Central Station Replacement plan include sufficient space for investigative staff to allow the City to terminate this lease once the new station is fully developed.
2. Approve the proposed resolution, subject to the findings of the pending appraisal report.

Member, Board of Supervisors
District 5



City and County of San Francisco

DEAN PRESTON

DATE: June 30, 2022
TO: Angela Calvillo
Clerk of the Board of Supervisors
FROM: Supervisor Preston
Chairperson
RE: Government Audit and Oversight Committee
COMMITTEE REPORTS

Pursuant to Board Rule 4.20, as Chair of the Government Audit and Oversight Committee I have deemed the following matters to be of an urgent nature and request each be considered by the full Board on Tuesday, July 12, 2022 as Committee Reports:

File No. 220600 Contract - Lystek International Limited - Class A Biosolids Management Services - Not to Exceed \$22,400,000

Resolution authorizing the Office of Contract Administration to enter into PeopleSoft Contract ID 1000025273 between the City and County of San Francisco and Lystek International Limited for the provision of Class A Biosolids management services with an initial contract not to exceed amount of \$16,400,000 for five years and \$6,400,000 for one two-year option to extend for a total not to exceed amount of \$22,400,000 and total contract duration of seven years commencing on July 1, 2022, through June 30, 2029. (Office of Contract Administration)

File No. 220422 Contract Modification - Recology San Francisco - Refuse Collection Services - Not to Exceed -\$39,600,000

Resolution authorizing the Office of Contract Administration to enter into a Third Amendment to the agreement between the City and County of San Francisco and Sunset Scavenger Company d/b/a Recology Sunset Scavenger, Golden Gate Disposal & Recycling Company d/b/a Recology Golden Gate, and Recology San Francisco (collectively, "Contractor") for refuse collection services at City facilities; increasing the contract amount by \$23,978,000 for a total not to exceed amount of \$39,600,000 and extending the term by two years from June 30, 2022, for a total contract duration of three years and seven months of December 1, 2020, through June 30, 2024.

These matters will be heard in the Government Audit and Oversight Committee during a regular meeting on Thursday, July 7, 2022, at 10:00 a.m.

A handwritten signature in blue ink that reads "Dean Preston".

Dean Preston