

City and County of San Francisco

Request for Proposals for

Technology Marketplace Tier 1B Specialists

RFP 95270-B



Date issued:

February 9, 2015

Pre-proposal conference:

Date and time to be determined

Pre-proposal conference location:

Location to be determined

Proposals due:

March 31, 2015, 5:00 p.m.

Proposals due location:

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

Request for Proposals for Technology Marketplace

TABLE OF CONTENTS

Contents

Section 1: Introduction & Schedule.....	1
Section 2: How the Technology Marketplace will Work	7
Section 3: Submission Requirements	12
Section 4: Tier 1 Qualifications and Documentation	14
Section 5: Selection Criteria	22
Section 6: Pre-proposal Conference and Contract Award.....	28
Section 7: Terms and Conditions for Receipt of Proposals.....	29
Section 8: Contract Requirements	34
Section 9: Protest Procedures	36
Appendix B.....	37

Appendices:

- A. General Administrative Requirements: Scope of Work.
- B. Standard Forms: Listing and Internet addresses of Forms related to Taxpayer Identification Number and Certification, to Business Tax Declaration, and to Chapters 12B and 12C, and 14B of the S.F. Administrative Code. B-1
- C. Professional Services Agreement (Form P-500) separate document
- D. Software Development Agreement (Form P-542) separate document
- E. Software License Agreement (Form P-545) separate document
- F. Software Maintenance Agreement (Form P-540) separate document
- G. CMD Attachment 2: Requirements for Architecture, Engineering and Professional Services Contracts, for contracts \$50,000 and over (separate document). Proposers should submit the following forms:
 - Form 2A CMD Contract Participation Form
 - Form 2B CMD “Good Faith” Outreach Requirements Form
 - Form 3 CMD Non-discrimination Affidavit
 - Form 5 CMD Employment Form

The following form may be required, depending on the circumstances:
Form 4 Joint Venture Participation Schedule
- H. Sample Insurance Certificate and Additional Insured Endorsement
- I. Proposal Questionnaire
- J. Financing Agreement

Request for Proposals for Technology Marketplace

Section 1: Introduction & Schedule

1.1. Purpose

The City and County of San Francisco, through its Office of Contract Administration (the “City” and “OCA” respectively) is seeking technology partners to assist the City in maintaining, developing and improving its information systems and processes. The City intends to create multiple as needed contracts as a result of this Request for Proposals (“RFP”) for the procurement of technology products, consulting services, maintenance services and training services.

The multiple contracts that result from this RFP will be categorized Tier 1B Specialist contracts within the San Francisco Technology Marketplace (“Technology Marketplace”). The City seeks to expand the current Technology Marketplace by competitively soliciting the available Tier 1B contract opportunities. The Technology Marketplace contracts replaced the contracts previously known as the “San Francisco Technology Store.” The name change reflects the need to facilitate the procurement of a wider array of technologies, services and expertise for the City; and to expand opportunities for small and local businesses. Proposers may submit proposals for any or all categories within Tier 1B.

There is no guarantee however of how much the City will spend going forward in total for products and services, and no contractor selected pursuant to this RFP is guaranteed any amount of business.

The category of opportunity for the Technology Marketplace is:

1.1.1. Tier 1B: Services and Products – Contracts greater than \$10 Million

The City is seeking up to the number of Specialist contracts per product and service category indicated in Section A through Section K in Table A under Tier 1B. These contractors may provide professional and specialized services, technology products, equipment, and maintenance and training services in one or more categories in accordance with Table 1 of Section 2. The contracts resulting out of Tier 1B will be over \$10 million and have minimum qualifications that reflect the critical nature of these services and products.

Table A – Maximum Number of Tier 1B Contracts

Products						
Section A	Section B	Section C	Section D	Section E	Section F	Section G
HP/Compaq	Dell	Cisco	IBM	Apple	Microsoft	Other Hardware and Software Manufacturers
Up to three (3) Specialist contracts	Up to three (3) Specialist contracts	Up to three (3) Specialist contracts	Up to three (3) Specialist contracts	Up to three (3) Specialist contracts	Up to three (3) Specialist contracts	Up to two (2) Specialist contracts
Professional and General Services						
Section H	Section I	Section J	Section K			
IT Professional and Integration Services	Specialized IT Professional Services	Hardware Maintenance Services	Training Services			
Up to two (2) Specialist contracts	Up to three (3) Specialist contracts	Up to four (4) Specialist contracts	Up to three (3) Specialist contracts			

1.2. RFP Goals

The goals of this RFP are:

1.2.1. To seek qualified contractors that will provide timely delivery of high-quality products and services at competitive prices

As with the previous Technology Store contract, this basic requirement will continue to be the core of this Technology Marketplace contract. The City’s need for IT products and services continues to evolve, and the City has developed this procurement vehicle to more efficiently meet these needs.

1.2.2. Expand contracting Tiers to provide increased levels of service, while increasing diversity and competition between Technology Marketplace contractors

The City is seeking to increase the contracting opportunities within the Technology Marketplace to promote competition so that the best value is provided for the City’s investment in technology.

1.2.3. Promote a partnership model between the City and the selected contractors to provide access to the latest technology

The City seeks to use a partnership model with the Technology Marketplace contractors to solve problems quickly and effectively implement more efficient solutions.

1.2.4. Promote technology standardization initiatives such as the Citywide PC Refresh Program

The Technology Marketplace will be used as a contracting vehicle to promote technology standardization initiatives that will allow the City to more efficiently manage technology assets on an enterprise basis.

1.2.5. Seek qualified contractors that will provide training and knowledge transfer to City staff, thus enabling them to do their jobs better and reducing the need to outsource IT services

The City wishes to expand its ability to provide training for its employees through the Technology Marketplace. The City plans to put emphasis on more technical training to enable City staff to be more self-sufficient and perform more complex tasks and reduce the need for consulting contracts.

1.2.6. Promote standardization of processes for electronic software licenses and maintenance renewals

The City is seeking qualified contractors that will assist in the process of standardizing and consolidating the procurement and electronic delivery of software licenses and maintenance. This will allow the City to more efficiently manage software assets on an enterprise basis.

1.2.7. Explore different methods of product delivery

The City is seeking contractors that can provide storefront outlets for purchase of small, frequently purchased and emergency Technology products and innovative methods of product delivery such as the use of on-premise vending machines for commonly purchased technology items.

1.2.8. Promote the use of online ordering and electronic catalog systems

The City is seeking contractors that can provide online ordering and electronic catalog systems, such as hosted or punch-out catalog systems to increase the transparency and the efficiency of the ordering process.

1.2.9. Promote environmentally responsible procurement (green purchasing), including without limitation, procurement that takes into account energy efficiency, waste reduction, recycling and reducing toxic components

Contracts resulting from this RFP will be subject to the City's Precautionary Purchasing Ordinance, which is Chapter 2 of the City's Environment Code. The City will strive to ensure that desktop computers and related products such as monitors, notebooks, tablets and thin clients available from the Technology Marketplace will produce less toxic waste, minimize the carbon footprint, use the least amount of packaging, and are the most recyclable. The City intends to continually upgrade its environmental criteria for information technology and electronics purchases over the term of the contract.

1.2.10. Support the Local Businesses Enterprises (LBE) program

The City is committed to supporting local businesses. This commitment to businesses is set forth in the Local Business Enterprise (LBE) Ordinance. Tier 1, Tier 2 and Tier 3 of the Technology Marketplace are designed to encourage opportunities for both large and small businesses.

a. LBE subcontracting

The RFP's subcontracting goal for Tier 1B Contractors is 15% of the value of the services the City obtains from the Contractor.

b. Local Business presence

A local business presence in San Francisco is required under Tier 1B contracts.

c. Micro-LBEs, Small and Medium Businesses

Tier 2 contracts provide contracting opportunities for Micro-LBEs, LBEs, Small and Medium businesses.

Tier 3 contracts provide contracting opportunities for Micro-LBEs. The City's LBE Ordinance includes a Set-Aside program for competitive award to Micro-LBEs.

d. Enriching the community

Tier 1B proposers will be asked to include in their proposal, the ways in which they plan to assist the City to expand access to technological resources in disadvantaged communities in San Francisco.

1.2.11. Provide for cooperative purchasing agreements

The City's Administrative Code allows the City to take advantage of other government agencies' competitively bid contracts and to offer the City's contracts to others under specified circumstances. The City intends to make the Technology Marketplace contract available to other interested government agencies. Contractors may be required to

enter into agreements to offer the same products and services on the same terms to those other agencies as they offer through the Technology Marketplace.

1.2.12. Promote fair wages and employment practices worldwide

The City strongly encourages all Technology Marketplace proposers to only offer products made by manufacturers that are members of the Electronic Industry Code of Conduct (EICC) Group. Further, all Technology Marketplace proposers are strongly encouraged to submit a specific plan for how the manufacturers they represent are implementing adherence to the EICC Group.

1.2.13. To seek more than traditional Information Technology

The City intends to seek “turnkey solutions” to the Technology Marketplace that would allow the City to describe a problem or need to a Technology Marketplace contractor and the contractor would propose a complete solution to fix the problem or meet the need. The solution might include other products and services not thought of as traditionally IT, but necessary to deliver the right solution. For example, a surveillance solution might include a server, software, cameras, acoustic components, and a marketing campaign for public awareness.

1.2.14. Evolution of the Technology Marketplace

Because of the rapidly changing nature of the IT industry and the City’s IT environment, the City may need to add contractors to the Technology Marketplace to meet the City’s needs. During the life of the Technology Marketplace contracts, OCA may conduct additional RFPs, Request for Qualifications (“RFQ”) and negotiate agreements or use other procurement processes as needed.

1.3. Schedule

The anticipated schedule for this contract is:

	Proposal phase	Estimated date
1.	RFP is issued	February 9, 2015
2.	Pre-proposal conference	<i>Location, date and time to be determined</i>
3.	Deadline for submission of written questions or requests for clarification	March 2, 2015, 5:00 p.m.
4.	Deadline for filing protests of RFP terms	March 17, 2015, 5:00 p.m.
5.	Proposals due	March 31, 2015, 5:00 p.m.
6.	Staff reviews proposals for compliance with the minimum requirements. Proposals that meet the requirements are evaluated and scored. The top-scoring proposals advance to the interviews.	
7.	Oral interviews begin	April 10, 2015
8.	Notice of Intent to Award; Contract negotiations begin	April 24, 2015
9.	Tentative Contract Award Date	May 12, 2015

All dates are subject to change. Proposers are requested to check the City's database online for the latest schedule at: <http://mission.sfgov.org/OCABidPublication/>

All questions or requests for clarification must be submitted in writing and emailed as an attachment no later than March 2, 2015 at 5:00 p.m. to: Computer.Store@sfgov.org

Reference "RFP #95270-B Technology Marketplace Tier 1B" in the subject field of any emails sent to the City.

No questions will be accepted after this time.

Any addenda will be posted on OCA's website at <http://mission.sfgov.org/OCABidPublication/> under the categories "Equipment, Supplies and General Services (OCA)".

Section 2: How the Technology Marketplace will Work

2.1. Technology Marketplace Overview

The City anticipates that Technology Marketplace Tier 1B contractors will be qualified to provide complete solutions by providing information technology equipment, services or both as outlined in this RFP. Orders will be distributed among the Technology Marketplace partners in accordance with the policies of OCA, and applicable laws and regulations of the City. There is no guarantee of any level of annual spending under the Technology Marketplace Contracts. The goal is to have selected contractors begin services to the City in May of 2015. The duration of the Technology Marketplace Tier 1B contracts will be three (3) years, with two (2) options to extend the contract for up to one (1) year at the sole and absolute discretion of the City.

Within the Technology Marketplace, contractors will be selected by City departments or OCA, as needs arise subject to formal guidelines and oversight by OCA. No minimum amount of business is guaranteed to any Technology Marketplace contractor under this contract. The City reserves the right to procure equipment, software and services from other sources during the term of these contracts as necessary, as well as to add new contractors.

For the term of the Contract and any extensions, other public agencies may choose to utilize the Technology Marketplace contracts to purchase services or products for the same price and upon the same terms and conditions. Technology Marketplace purchases made by other public agencies will be subject to an administrative fee. This administrative fee will be collected by the contractor and remitted to the City.

Table 1 specify the functional groups under which contracts will be awarded for Tier 1B. The following definitions will apply to Tier 1B.

- **Hardware** - Refers to physical devices and components that make up a computing system or any technology based solution such as facility security systems, multimedia video and sound systems, and fleet management systems which may include but is not limited to internal components such as CPUs, power supplies, hard drives, fans, heat sinks and video cards or external components such as webcams, microphones, routers, network switches, data cables, monitors, battery back-ups, printers, speakers and card readers.
- **Hardware Maintenance** - Refers to maintenance that is either optional or required to ensure that the hardware remains operational and continues to satisfy user requirements. Hardware maintenance may include but is not limited to: parts replacement, hardware warranty upgrades and technical support.
- **Software** - Refers to organized collections of computer data and instructions which may include but is not limited to System software and Application software and programs

used for Cloud Computing, Software-as-a-Service (SaaS) solutions, software licenses and software subscription services.

- **Software Maintenance** - Refers to maintenance that is either optional or required to ensure that the software remains operational and continues to satisfy user requirements. Software maintenance may include but is not limited to: software updates, patches, upgrades and technical support.
- **Professional IT and Integration Services** - Refers to services requiring specialized computer and IT related knowledge, expertise, or training acquired either by a prolonged course of study or equivalent experience in the field. Examples may include but are not limited to: software developers, programmers, engineers, analysts, project managers, system architects and system integrators.
- **Specialized IT Services** - Refers to IT professional services that in addition to project management skills require a specific area of expertise. Examples may include but are not limited to: network security testing services, data migration services and facility security system configuration and testing services.
- **Hardware Maintenance Services** – This general services category refers to hardware maintenance of any technology related product, device, component or part. Examples may include but are not limited to: on-site repair of stand-alone or networked PCs, printer maintenance and repair of network hardware.
- **Training Services** - This general services category refers to training for technology products and services including but not limited to instruction, assistance and training services for end users and technical support.
- **Installation and Configuration Services** – Refers to the installation and configuration services incidental to the purchase of hardware and software products.

2.2. Description of Tier 1B

2.2.1. Tier 1B: Products, Professional Services, Maintenance and Training Services (Contracts greater than \$10 Million)

- To propose this category use Table 1: RFP 95270-B Technology Marketplace Matrix from this RFP as a stand-alone document. Check the sections in Table 1 that your company provides and submit documentation for the Minimum Qualifications (MQs) applicable for that Product and Service according to Section 4. If an extra column is added to Table 1, make the font **blue** or otherwise make it stand out from the City's original document.
- Proposers may submit proposals as a Specialist (Tier 1B).
 - Tier 1B: Specialists may propose a single product or service category or any combination of product or service categories indicated in Section A through Section K in Table 1. If awarded a contract, Specialists will only be allowed to offer that single product or services category for the term of the contract and additional products that OCA deems to be incidental to the transaction.
- Provide supporting documentation detailed in the Selection Criteria according to Section 5.1
- General administrative requirements for working in the Marketplace are described in Appendix A.
- LBE subcontracting goals will apply to Services contracts in Tier 1B. LBE subcontracting goals will not apply to Product contracts in Tier 1B.

2.3. Competitive Bid Process within the Technology Marketplace

Proposers awarded contracts in Tier 1 and Tier 2 will be eligible to participate in the City’s competitive bid process for ordering products and services. The intent is that a competitive solicitation will be required for all orders greater than \$10,000. This \$10,000 threshold is estimated and could be revised during the term of the contract. Contracts in Tier 1 will have an estimated transactional limit of \$2,500,000 which may be revised during the term of the contract. Contracts in Tier 2 will have an estimated transactional limit of \$100,000 which may be revised during the term of the contract. Orders will be distributed among the Technology Marketplace contractors in accordance with the policies of OCA and applicable laws and regulations of the City as they may be amended from time to time. The table below shows how competitive bids may be distributed among Tiers 1 and 2. Competitive bid solicitations will occur within either Tier 1 or Tier 2. Competitive bid solicitations will not occur between Tier 1 and Tier 2. The threshold amounts and the process may change during the term of the contract.

Description	Transaction Amount	Competitive Bid Process
Any Contract	Greater than \$2,500,000	RFP outside of Technology Marketplace
Professional Services	From \$10,000.01 to \$2,500,000	Tier 1
General Services and Products	From \$100,000.01 to \$2,500,000	Tier 1
General Services and Products	From \$10,000.01 to \$100,000	OCA will randomly conduct competitive bids in either Tier 1 or Tier 2

TABLE 1
RFP 95270-B Technology Marketplace Matrix – **Tier 1B:** For Contracts \$10M and Above

Products								Professional and General Services				
Item Description	Section A	Section B	Section C	Section D	Section E	Section F	Section G	Item Description	Section H	Section I	Section J	Section K
	HP/Compaq	Dell	Cisco	IBM	Apple	Microsoft	Other Hardware and Software Manufacturers		IT Professional and Integration Services	Specialized IT Professional Services	Hardware Maintenance Services	Training Services
Hardware	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Professional and General Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hardware Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
Software	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
Software Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
Installation and Configuration Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
MQ 1	Local Presence	Local Presence	Local Presence	Local Presence	Local Presence	Local Presence	Local Presence	MQ 1	Local Presence	Local Presence	Local Presence	Local Presence
MQ 2	5 Years of Experience	5 Years of Experience	5 Years of Experience	5 Years of Experience	5 Years of Experience	5 Years of Experience	5 Years of Experience	MQ 2	5 Years of Experience	5 Years of Experience	5 Years of Experience	5 Years of Experience
MQ 3	Credit Report	Credit Report	Credit Report	Credit Report	Credit Report	Credit Report	Credit Report	MQ 3	Credit Report	Credit Report	Credit Report	Credit Report
MQ 4	Average Annual Gross Sales in Excess of \$5 Million	Average Annual Gross Sales in Excess of \$5 Million	Average Annual Gross Sales in Excess of \$5 Million	Average Annual Gross Sales in Excess of \$5 Million	Average Annual Gross Sales in Excess of \$5 Million	Average Annual Gross Sales in Excess of \$5 Million	Average Annual Gross Sales in Excess of \$5 Million	MQ 4	Average Annual Gross Sales in Excess of \$5 Million	Average Annual Gross Sales in Excess of \$5 Million	Average Annual Gross Sales in Excess of \$5 Million	Average Annual Gross Sales in Excess of \$5 Million
MQ 5	Bid Security	Bid Security	Bid Security	Bid Security	Bid Security	Bid Security	Bid Security	MQ 5	Bid Security	Bid Security	Bid Security	Bid Security
MQ 6	HP Authorized Reseller or Manufacturer	Dell Registered Partner or Manufacturer	Certified Cisco Gold Partner or Manufacturer	IBM Premier Business Partner or Manufacturer	Authorized Apple Reseller or Manufacturer	Authorized Microsoft Reseller or Manufacturer	Attach Applicable Reseller and Partner Certifications or Manufacturer	MQ 6	3 Microsoft Certifications	Attach Applicable Service Certifications	Minimum of 5 Certified Technicians	Attach Applicable Training Certifications
MQ 7	HP Authorized for "US Partner Agreement"							MQ 7	1 VMware Certification			
MQ 8	HP Authorized for "US Delivery Partner Addendum"							MQ 8				
MQ 9	Account Manager	Account Manager	Account Manager	Account Manager	Account Manager	Account Manager	Account Manager	MQ 9	Account Manager	Account Manager	Account Manager	Account Manager

Product or service is offered in proposal Product or service is not offered in proposal

Section 3: Submission Requirements

3.1. Time and Place for Submission of Proposals

Proposals must be received by 5:00 p.m., on March 31, 2015. Postmarks will not be considered in judging the timeliness of submissions. Proposals may be delivered in person or mailed to:

City and County of San Francisco
Office of Contract Administration
1 Dr. Carlton B. Goodlett Place
City Hall, Room 430
San Francisco, CA 94102
Reference: RFP# 95270-B: Technology Marketplace Tier 1B

Proposers shall submit one (1) original and seven (7) printed copies of the proposal, which should be individually bound with the pages numbered accordingly. The original document should be clearly marked as “Original” and the copies should be clearly marked as “Copy”. Proposers should include an electronic copy of their proposal on CD, DVD or flash drive media. Proposals should be clearly marked as Tier 1B Specialist.

Each proposal received will be screened to ensure that the information required in this RFP is included. Partial or complete omission of any of these items from a proposal may disqualify the proposal from further consideration. Proposals submitted by fax or email/electronic communication will not be accepted. Late submissions will not be considered. All costs associated with the proposal preparation will be the sole responsibility of the Proposer at no charge to the City.

3.2. Proposal Format and Organization

Submit your proposal in a three-ring binder, printed on recycled paper, double-sided to the maximum extent that is practical. Do not bind your proposal with spiral binding, glued binding or any similar type of binding.

In order to expedite the evaluation process, each proposal should be organized as described below. All proposals should include a Table of Contents. The use of tabs within the document is required and pages should be numbered. Table 2 below is intended as a general guide and may not include all the items required for proposals. Proposers are responsible for reviewing all portions of this RFP and any addenda when preparing their proposals.

TABLE 2

Binder Contents for Tier 1B	
Tab	
1.	Table of Contents
2.	Introduction and Executive Summary
3.	Completed Table 1: Technology Marketplace Matrix
4.	MQ 1: Local Presence Documentation
5.	MQ 2: Company Resume and References
6.	MQ 3: Credit Report
7.	MQ 4: Financial Statements and Tax Returns
8.	MQ 5: Bid Security
9.	MQ 6 through MQ 8: Manufacturer Authorizations and Professional and Training Certifications
10.	MQ 9: Account Manager
11.	Location and Capacity Documentation per Section 4.1.1.2.
12.	Other Product and General Service and Maintenance Requirements per Section 4.1.6.
13.	Out of Warranty Service Program Documentation per Section 4.1.6.3.
14.	Network Personnel and Technical Consultant Requirements per Section 4.1.7.
15.	Electronic Order Tracking System
16.	Green Purchasing: Educate clients on green product offerings
17.	Green Purchasing: Free take-back and recycling service for packaging materials
18.	Green Purchasing: Free take-back and recycling service for equipment
19.	Free asset tagging and inventory on delivery
20.	Scenario 1
21.	Scenario 2
22.	Scenario 3
23.	Hardware Maintenance Services Documentation
24.	Training Services Documentation
25.	Plan to Assist City to expand use of Technology in the community.
26.	Standard Forms - Appendix B
27.	Bid Questionnaire
28.	Joint Venture Agreement (if applicable)
29.	Signed Addenda (if applicable)
30.	Electronic copy of proposal (USB drive, DVD or CD)
Sealed Envelope Items	
31.	CMD Forms – Appendix G

Section 4: Tier 1B Qualifications and Documentation

4.1. Tier 1B Minimum Qualifications

This section defines a Proposer's minimum qualifications for Tier 1B, Services and Products. Any proposal for Tier 1B that does not demonstrate that the proposer meets the following minimum qualifications by the deadline for submittal of proposals or the deadline indicated in any requests for clarification issued by the City will be considered non-responsive, will not be scored and will not be eligible for award of a Technology Marketplace contract. Tier 1B proposers should submit the information in Section 4 in the order specified under Section 3.2 Proposal Format and Organization.

These minimum mandatory qualifications will be incorporated into each Technology Marketplace contract. A Contractor's continuing compliance with these qualifications will be a material condition of the contract, and failure to maintain these minimum requirements will be subject to all applicable rights and remedies for breach of contract.

Submit a letter of introduction and executive summary of the proposal (up to 2 pages). The letter should be signed by a person authorized by the proposer's firm to obligate the proposer's firm to perform the commitments contained in the proposal. Submission of the letter will constitute a representation by the proposer's firm that the proposer's firm is willing and able to perform the commitments contained in the proposal. Include the proposer's company's fax number and e-mail contact information.

Tier 1B proposers may also demonstrate their qualifications in their proposals by creating a joint venture. Joint ventures must demonstrate their compliance with these requirements by showing that the joint venture as a whole meets the minimum mandatory requirements of this section. Each minimum mandatory requirement must be met in its entirety by at least one of the joint venture partners, unless otherwise specified. For example, if the requirement is five (5) years of experience, one firm among the joint venture partners must have five (5) years of experience. The requirement cannot be met by five joint venture partners with one year of experience each.

At the time a proposal is submitted, a joint venture must be a legally constituted entity by means of a binding joint venture agreement that makes the joint venture partners jointly and severally liable for performance of the Technology Marketplace contract. If a proposer is submitting a proposal as a joint venture, they must provide a copy of their joint venture agreement with their proposal. The joint venture must have its own separate Federal tax identification number. For more information on City requirements for joint ventures, consult the San Francisco Contract Monitoring Division ("CMD"). The contact information for CMD is available on the web at: <http://sfgsa.org/index.aspx?page=6138>

4.1.1. Facilities (MQ 1)

4.1.1.1. Local Presence

All Tier 1B proposers must have a business presence within the City and County of San Francisco at the time proposals are submitted. A “business presence” means an office, retail location, warehouse or service facility within the City limits, in a location that is not residentially zoned. Home offices or home warehouses will not be considered to satisfy this requirement.

Firms certified by the Contract Monitoring Division (CMD) as LBEs automatically qualify for this specific minimum qualification section.

4.1.1.2. Location and Capacity

Tier 1B proposers should provide the addresses, hours of operation and contact information for all facilities where they have the capability to perform the following services and the number of employees available at each site to perform the services. As part of its evaluation, the City may visit these facilities.

- Assembly, configuration and testing of equipment
- Diagnosis, repair and maintenance of equipment
- Product demonstrations

Tier 1B proposers may utilize subcontractors to provide assembly, configuration and testing of equipment, diagnosis, repair and maintenance services. However, prime contractors will be fully responsible for the quality and the timely provision of any subcontracted services. Any determination that proposals meet the Minimum Qualifications or any other RFP requirements will take place during the RFP evaluation process after proposals are due.

Proposers should have a product showroom within forty (40) miles of City Hall for the purpose of demonstrating products, or provide free demonstrations onsite at City locations, or arrange for product showcases and demonstrations at manufacturers’ showrooms (within forty (40) miles of City Hall). Tier 1B proposers who plan to utilize manufacturers’ showrooms should state the same and list the location of the manufacturers’ showrooms for the product lines represented in Section 4.1.5 only.

4.1.2. Experience (MQ2)

Due to the size and complexity of the City’s requirements, Tier 1B proposers, must provide a company resume along with six (6) references demonstrating a minimum of five (5) years of experience as an information technology products and services contractor and at least five (5) years of experience selling and servicing major companies or public entities comparable in size and/or requirements to the City.

References should be able to verify a Proposer's experience in the areas listed below. Proposers may put together a team of prime and subconsultants with the required Proposals and experience to provide these products and services:

- Large account sales and support of computers and other technologies sales, including demonstrations, design, and configuration
- The integration of various technologies including without limitation computers, audio visual, video equipment, communications and office productivity equipment
- Hardware and software installation
- Cross-platform design and integration
- Network design, installation and support
- Project management and consulting
- Training
- Diagnosis, repair and maintenance of both hardware and software
- Out of warranty service programs
- Other value-added services

Examples of products to be provided and supported under the Technology Marketplace:

- Personal computers, workstations and related items
- Audio visual, video, communications and productivity equipment
- High-end network servers and enterprise products, including routers, switches, SANs, NAS, appliances and network infrastructure items
- Software products that support the following operating systems: Windows XP/7/8, Windows Server 2008/2012, Apple OS X/iOS, Android OS, Linux/UNIX and Citrix
- Surveillance equipment including cameras and acoustic devices

4.1.3. Financial Stability and Bonding

The financial solvency and bonding capability of Technology Marketplace proposers are critical to protect the City and the subcontractors who work with the Technology Marketplace proposers. Proposers must provide the following:

4.1.3.1. Credit Reports (MQ 3)

Tier 1B proposers and all parties in a joint venture constituting such a proposer must submit a credit report from one of the following major credit institutions: Dunn and Bradstreet, Moody's, or Standard and Poor's and agree that if they are awarded a contract, they may be required to re-submit their company's credit reports from one of the above mentioned major credit institutions to the City for review by the Controller's Office once a year.

4.1.3.2. Financial Statements and Tax Returns (MQ 4)

Tier 1B proposers must demonstrate average annual gross sales exceeding \$5 million for the prior three fiscal years. Joint ventures may meet this requirement by demonstrating the combined gross sales amounts of the individual joint venture partners.

The City, in consultation with the Contract Monitoring Division, and the City's Risk Manager may require contractors to supply a bond, irrevocable letter of credit, insurance policies, or other financial guarantee of a type to be determined by the City, from a credible financial institution acceptable to the City for project-specific consulting and professional services projects of \$50,000 or more.

4.1.4. Bid Security (MQ 5)

Each proposal must be accompanied by an original bid bond or money order or a cashier's check or certified check in the total of \$5,000 payable to the City and County of San Francisco to guarantee the filing of Insurance Certificates and to guarantee the proper execution of the contract. Personal or company checks are not acceptable. Faxed copies of the original bid bond or money order or a cashier's check or certified check will not be accepted. Any proposal submitted without the proper bid security will be determined to be non-responsive and result in the rejection of the proposal.

After the successful proposers have furnished the required documents or the City has rejected the proposals, all bid securities except those which may have been forfeited will be returned to the respective proposers whose proposals they accompanied.

4.1.5. Major Product and Service Lines (MQ 6, MQ 7 and MQ 8)

Tier 1B proposers must be authorized or certified by the relevant equipment or software manufacturer to service, configure and provide the City repairs (unless the manufacturer retains service rights to the product) at the minimum certification levels for products and services listed in Table 1 of Section 2. Tier 1B proposers must submit a certificate, email, screen print from a manufacturer authorized dealer web portal or letter issued by the manufacturer which should include to the extent possible the following information:

- Signature of manufacturer representative
- Authorized dealer identification number
- Authorization or certification level
- Authorization or certification dates

Tier 1B proposers and any of their subcontractors shall maintain such authorizations and/or certifications in good standing for the term of any Technology Marketplace contract they are awarded. Proposals from manufacturers are not required to meet these requirements. For Professional and Specialized Service providers and Maintenance Service providers, relevant certifications and letters are as follows:

Hewlett Packard/Compaq

- HP Authorized Reseller
- HP Authorized for “**US Partner Agreement**”
- HP Authorized for “**US Delivery Partner Addendum**”

Tier 1B proposers may utilize subcontractors to provide HP warranty service programs. However, prime contractors will be fully responsible for the quality and the timely provision of any subcontracted services. Any determination that proposals meet the Minimum Qualifications or any other RFP requirements will take place during the RFP evaluation process after proposals are due.

Cisco

- Certified Cisco Gold Channel Partner. Proposers should submit a complete list and supporting documentation of their Cisco Certifications and Specializations.

IBM

- IBM Premier Business Partner Program : authorized to resell and provide support for the IBM PureSystems (includes Flex System) and System X (includes BladeCenter)

Dell

- Dell Registered Partner

Apple

- Authorized Apple reseller

Microsoft

- Authorized Microsoft reseller

Professional IT services

- 3 Microsoft certifications
- 1 VMware certification

Specialized IT services

- Applicable service certifications

Maintenance and Installation services

- Minimum of five technicians

Training services

- Applicable training certifications

In response to changes in the industry, City may request that Tier 1B contractors obtain additional certifications during the term of the contract.

Contractors should offer a manufacturer’s complete product line for the term of the Contract. For example, in offering the product line of a manufacturer of system units, the

Contractor should offer system units, monitors, keyboards, printers, workstations, wireless technology, and software, including operating systems and add-on boards, peripheral equipment, memory and memory upgrades, network equipment, and accessories.

4.1.6. Other Product and General Service and Maintenance Requirements

4.1.6.1. Other Product Lines

The City recognizes that the industry and technology are constantly changing. The major product and service lines described in Table 1 represent a significant portion of the City's current purchases. However, due to the evolving nature of the industry and the City's requirements, in addition to the manufacturers and product lines listed in Table 1 of Section 2, Tier 1B proposers should demonstrate the resources and talent to access, provide and support additional products and new technologies to meet the City's needs.

Tier 1B proposers should provide a list and describe their key manufacturer and distributor relationships (responses should be limited to one page) and evidence of other dealer authorizations other than those requested in Section 4.1.5 above.

Any applicable authorizations and certifications must be verified by a certificate, email, screen print from a manufacturer authorized dealer web portal or letter issued by the manufacturer which should include to the extent possible the following information:

- Signature of manufacturer representative
- Authorized dealer identification number
- Authorization or certification level
- Authorization or certification dates
- Verification of the proposer's lines of credit with said manufacturer or distributor.

Manufacturer authorizations will not be required for any product line in Section 4.1.6.1. if the manufacturer does not require any authorization for a reseller to obtain products through distribution. For any product line where manufacturer authorization is required, proposers offering those product lines will be required to submit manufacturer authorizations with their proposals.

4.1.6.2. Software

Tier 1B proposers should be capable of, and certified to supply software products that support the following operating systems: Windows XP/7/8, Windows Server 2008/2012, Apple OS X/iOS, Android OS, Linux/UNIX and Citrix.

4.1.6.3 Service

Tier 1B proposers should offer an "out of warranty" service program. Such a program should include a free repair estimate and the choice of on-site or in-shop repairs,

where appropriate. Tier 1B proposers should provide a detailed description of the “out of warranty” service program including without limitation:

- A list of all manufacturers’ equipment proposers are authorized to service and repair. Provide a certificate, email or letter written on the manufacturer’s letterhead and signed by the manufacturer including the proposer’s authorized service identification number and the dates that such authorizations and/or certifications are valid. Contractor and any subcontractors shall maintain authorizations or certifications in good standing for the term of the Contract.
- All repairs are to be billed on a time and materials basis. Any evaluation and/or diagnosis will be offered at no cost to the City.
- Response times.
- The choice of on-site or in-shop repairs, where appropriate.

Tier 1B proposers should be able to provide staff service technicians who meet the minimum requirements of twenty-four (24) months of continuous repair experience within the thirty (30)-month period immediately preceding the RFP date. Tier 1B proposers should provide resumes for all individuals satisfying this requirement as part of the proposer’s response to this RFP.

Tier 1B proposers may utilize subcontractors to provide “out of warranty” service programs specified in Section 4.1.6.3. However, prime contractors will be fully responsible for the quality and the timely provision of any subcontracted services. Any determination that proposals meet the Minimum Qualifications or any other RFP requirements will take place during the RFP evaluation process after proposals are due.

4.1.7. Network Personnel and Technical Consultants Requirements

Tier 1B proposers may also be asked to provide an array of consulting and technical services to improve the City’s processes and information delivery systems.

Tier 1B proposers should be able to provide technical consultants proposed for the area of networking configuration with at least twenty-four (24) months of continuous network configuration experience within the thirty (30)-month period immediately preceding the RFP date. Contractor will continuously employ technical consultants with knowledge and experience with Windows XP/7/8, Windows Server 2008/2012, Apple OS X/iOS, Android OS, Linux/UNIX and Citrix network operating systems.

Tier 1B proposers should provide resumes and certificates of training or written correspondence from the manufacturers specifying the name of the proposer’s employees who satisfy and how they satisfy the above requirements as well as the requirements in Sections 4.1.7.1 through 4.1.7.2 below. The dates that the certifications should be included as part of the proposer’s response to this RFP.

4.1.7.1. Network Systems Engineers

The staff of Tier 1B proposers should include at least two Network System Engineers who have at least 24 months of continuous experience in network design within the thirty (30)-month period immediately preceding the RFP issue date. Proposed Network System Engineers must be certified at the minimum level required by the manufacturer, for those manufacturers of network operating systems that have certification programs.

In addition to the availability and capability of certified Network Systems Engineers, Technical Consultants should be available to respond to and resolve inquiries concerning Network products within twenty-four (24) hours. Contractor will continuously employ trained Technical Consultants with current training and knowledge of all the equipment and software sold by contractor through the Technology Marketplace.

4.1.7.2. Linux/UNIX Systems Engineers

The staff of Tier 1B proposers should include at least one Linux/UNIX System Engineer, with Linux/UNIX systems experience that meets the minimum requirements of twenty-four (24) months of continuous experience within the thirty (30)-month period immediately preceding the RFP date. Proposed UNIX System Engineers must be certified at the minimum level required by the manufacturers, for those manufacturers of UNIX Operating Systems that have certification programs.

4.1.8. Account Manager (MQ 9)

The staff of Tier 1B proposers must include an “Account Manager” who must have a minimum of three (3) years of experience in the technology industry within the last four (4) years prior to the RFP issue date, and demonstrated experience in building and maintaining successful relationships with customers and suppliers, and servicing large public sector and/or corporate accounts. The Account Manager’s resume verifying experience must be attached to the proposal.

4.1.9. Other Requirements

As appropriate, the City reserves the right to impose additional reasonable requirements depending upon the business demands and technical complexity of projects resulting from this RFP.

Section 5: Selection Criteria

5.1. Selection Criteria (Tier 1B Specialists)

Attendance at the pre-proposal conference on *Date and time to be determined* is not mandatory, but is strongly recommended for all proposers.

Tier 1B proposals will be evaluated by a Selection Committee. The City intends to evaluate the Tier 1B proposals generally in accordance with the criteria itemized below.

5.1.1. Phase 1: Minimum Qualifications

Only Tier 1B proposals that meet the Tier 1B Minimum Qualifications set forth above in Section 4 will be scored as summarized below.

5.1.2. Phase 2: Selection Criteria

If a proposer meets the minimum qualifications, a Selection Committee will score their Tier 1B proposal. The evaluation of the proposals shall be within the sole judgment and discretion of the Selection Committee. Proposers may be required to submit additional information to clarify their proposals at any time throughout the evaluation process.

5.1.3. Phase 3: Interviews

The proposers scoring in the competitive range for the Phase 2 evaluation of Tier 1B will be interviewed by the Selection Committee. Up to the number of Specialist contracts per product and service category indicated in Section A through Section K in Table A which receive the highest scores may be selected for award. If for any reason the City and any of these proposers are unable to negotiate a contract, the City may move on to the next highest ranked Tier 1B proposer to negotiate an agreement. The City may follow this process until the City has up to the number of Specialist contracts per product and service category indicated in Section A through Section K in Table A negotiated for presentation and approval of the Board of Supervisors or until the City decides to not award any contracts.

5.1.3.1. Phase 2 and Phase 3 Scoring for Tier 1B Section A through Section G Proposals

Item #	Description	Points	%
Phase 2			
1	Quality of Proposal	200	36.4%
2	Electronic order tracking system	20	3.6%
3	Green purchasing items		
	a. Educate clients on green product offerings	50	9.1%
	b. Free take-back and recycling service for packaging materials	20	3.6%
	c. Free take-back and recycling service for equipment	20	3.6%
4	Free asset tagging and inventory on delivery	15	2.7%
5	Plan to Assist City to expand use of Technology in the community.	25	4.5%
	Total Points Phase 2	350	
Phase 3			
6	Interview	200	36.4%
	Total Points Phase 2 and Phase 3	550	100%

5.1.3.2. Phase 2 and Phase 3 Scoring for Tier 1B Section H and Section I Proposals

Item #	Description	Points	%
Phase 2			
1	Quality of Proposal	200	36.4%
2	Scenario 1	50	9.1%
3	Scenario 2	50	9.1%
4	Scenario 3	50	9.1%
	Total Points Phase 2	350	
Phase 3			
5	Interview	200	36.4%
	Total Points Phase 2 and Phase 3	550	100%

5.1.3.3. Phase 2 and Phase 3 Scoring for Tier 1B Section J Proposals

Item #	Description	Points	%
Phase 2			
1	Quality of Proposal	200	36.4%
2	Hardware Maintenance Services	150	27.3%
	Total Points Phase 2	350	
Phase 3			
3	Interview	200	36.4%
	Total Points Phase 2 and Phase 3	550	100%

5.1.3.4. Phase 2 and Phase 3 Scoring for Tier 1B Section K Proposals

Item #	Description	Points	%
Phase 2			
1	Quality of Proposal	200	36.4%
2	Training Services	150	27.3%
	Total Points Phase 2	350	
Phase 3			
3	Interview	200	36.4%
	Total Points Phase 2 and Phase 3	550	100%

The scoring items are described further below.

5.1.4. Description of evaluated items

The numbered items below correspond to the items on the chart in the previous section.

5.1.4.1. Quality of the proposal (up to 200 points)

This is the general quality of the proposal, including, but not limited to:

- Adherence to the requirements of the RFP
- Project approach including understanding of tasks, issues involved, organization and work schedule
- Firm and team qualifications include experience with similar projects
- Completeness and clarity

5.1.4.2. Electronic Order Tracking System (up to 20 points)

Contractors may provide an electronic “Order Tracking System” that can provide order status information to all Technology Marketplace customers (preferably by line item) including open orders, back orders (including estimated time of shipment), partial orders, and configured orders. Electronic “Order Tracking Systems” may include hosted or punch-out catalog functionality. This information shall be accessible by the purchase order number and the Contractor’s order number. The information in the Order Tracking System should be updated with current information each calendar day, no later than 6:00 a.m. Pacific Standard Time. Provide a description of the system you will provide and the system’s capacity. Include a printout of user screens. Limit 5 pages.

5.1.4.3. Green Purchasing Items (up to 90 points)

5.1.4.3.1. Contractor will educate clients on environmentally preferable (‘green’) product offerings designated by the City. Provide a description of the methodology for communicating this information. Proposer should attach a sample green products list and a brief description of the frequency in which the list will be published. For more information see **Appendix A, Section D.3 Environmentally preferable product purchasing.** Limit 3 pages. **(up to 50 points)**

5.1.4.3.2. Contractor offers free take back service for packaging materials and takes them to an appropriate site for recycling.

Proposers should describe their processes and procedures for pick-up, lead times, and disposal or recycling sites. Specify the disposal sites that will be used and specify the types of materials that will be brought to each site. Limit 3 pages. **(up to 20 points)**

5.1.4.3.3. Contractor will offer free take-back and recycling program for equipment and takes the equipment to an appropriate site for recycling or re-use.

Proposers should describe processes and procedures for pick-up, leadtimes, and recycling or re-use sites. If you are proposing to re-use products, describe the procedures that will be used to insure that sensitive City information is deleted, and to insure that best efforts are made to eventually recycle the equipment appropriately. Specify the recycling sites that will be used and the types of products that will be brought to each site. Limit 5 pages. **(up to 20 points)**

5.1.4.4. Asset Tagging and Inventory (up to 15 points)

Contractor offers free asset tagging, including an inventory with each delivery.

Proposers should describe how they would perform this task and attach a sample inventory. (Limit 2 pages).

5.1.4.5. Project Problem Scenarios

The goal of the proposer in each of the scenarios should be to demonstrate the ability to provide economical solutions to solve problems. The narratives should be simple, straightforward, and succinct. The importance of project planning, project tracking, training and overall communications are part of the evaluation focus of this section of the RFP.

5.1.4.5.1. Scenario 1: (up to 50 points)

This section shall be added by addendum during the RFP process.

5.1.4.5.2. Scenario 2: (up to 50 points)

This section shall be added by addendum during the RFP process.

5.1.4.5.3. Scenario 3: (up to 100 points)

This section shall be added by addendum during the RFP process.

5.1.4.6. Hardware Maintenance Services (up to 150 points)

Proposer offers out of warranty hardware maintenance services that comply with Section 4.1.6.3.

Proposers should describe their out of warranty maintenance service plan and provide the following documentation: (Limit 5 pages).

- Names of Technicians
- Technician credentials and resumes
- Provide three (3) references

5.1.4.7. Training Services (up to 150 points)

Proposer offers training services. Proposers should describe the training services they offer and provide the following documentation: (Limit 5 pages).

- Names of Trainers
- Trainer credentials and resumes
- Training approach and content
- Provide three (3) references

Tier 1B proposers may utilize subcontractors to provide Training Services However, prime contractors will be fully responsible for the quality and the timely provision of any

subcontracted services. Any determination that proposals meet the Minimum Qualifications or any other RFP requirements will take place during the RFP evaluation process after proposals are due.

5.1.4.8. Enriching the Community (up to 25 points)

Contractors may be asked to assist the City in “giving-back” to the community. Describe programs that your company has offered in the past in bridging the “digital divide” for disadvantaged communities or similar community based projects or programs. Discuss programs that you would be willing to implement in San Francisco.

5.1.4.9. Interviews for proposers in the competitive range (up to 200 points)

The City will interview proposers in the “competitive range,” meaning they could score as the top finalists.

For example, if the highest-scoring proposers (before the interview) are:

- A. 345
- B. 340
- C. 330

then the City will interview proposers with scores of **130** and above. The “competitive range” is 130 points and higher. Proposers with scores of **129** and below will not be interviewed because it is mathematically impossible for them to ultimately score higher than proposer C, the third highest-scoring proposer prior to the interview.

5.1.4.10. LBE Bid Discount and LBE Rating Bonus

The contracts for proposers under Tier 1B will be more than \$10 million, and as such the Small LBE and Micro LBE 10% bid discount and rating bonus will not apply. Proposers certified by CMD as Small LBEs, Micro LBEs or SBA LBEs may be entitled to a 2% bid discount and rating bonus subject to certain limitations and exceptions.

5.1.4.11. Pricing

Pricing will not be evaluated during the RFP phase. Pricing will be evaluated during bidding within Tier 1, Tier 2 and Tier 3.

All Technology Marketplace contractors will be required to extend their most favorable pricing for products and services to the City during the term of the contract. This most favorable pricing must be at least equivalent to the pricing that the contractor makes available to major companies or other public entities comparable in size and/or requirements to the City.

Section 6: Pre-proposal Conference and Contract Award

6.1. Pre-Proposal Conference

All proposers are strongly encouraged to attend the pre-proposal conference on *Date and time to be determined* to be held at *Location to be determined*. Proposers are urged to read this proposal prior to the conference. The conference will begin on time and company representatives are urged to arrive on time. Agenda items already covered will not be repeated for the benefit of late arrivals. A sign-in sheet will be available at the meeting. All attendees should sign in to insure receipt of any notification of addenda or other information regarding this RFP. If you have further questions regarding the RFP, contact the individual designated in Section 7.2.

6.2. Contract Award

The Selection Committee will select the high scoring proposers with whom OCA staff shall commence contract negotiations. The selection of any proposal shall not imply acceptance by the City of all terms of the proposal, which may be subject to further negotiation and approvals before the City may be legally bound thereby. If a satisfactory contract cannot be negotiated in a reasonable time OCA, in its sole discretion, may terminate negotiations with the highest ranked proposer and begin contract negotiations with the next highest ranked proposer.

There will be one contract award for each proposer who qualifies for award in Tier 1B.

Section 7: Terms and Conditions for Receipt of Proposals

7.1. Errors and Omissions in RFP

Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify the Department, in writing, if the proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to the Department promptly after discovery, but in no event later than five working days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

7.2. Inquiries Regarding RFP

Inquiries regarding the RFP and all oral notifications of an intent to request written modification or clarification of the RFP, must be delivered in writing via email to:

Reference RFP 95270-B, Technology Marketplace Tier 1B

Email: Computer.Store@sfgov.org

Questions and answers will be posted on the City's website at:

<http://mission.sfgov.org/OCABidPublication/>.

7.3. Objections to RFP Terms

Should a proposer object on any ground to any provision or legal requirement set forth in this RFP, the proposer must, no less than ten (10) working days prior to the deadline for submission of proposals, provide written notice to the Department setting forth with specificity the grounds for the objection. The failure of a proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

Any objections to RFP Terms must be delivered in writing via email to:

Reference RFP 95270-B, Technology Marketplace Tier 1B

Email: Computer.Store@sfgov.org

7.4. RFP Addenda

The Department may modify the RFP, prior to the proposal due date, by issuing Addenda, which will be posted on the website. The proposer shall be responsible for ensuring that its proposal reflects any and all Addenda issued by the Department prior to the proposal due date regardless of when the proposal is submitted. Therefore, the City recommends that the

proposer consult the website frequently, including shortly before the proposal due date, to determine if the proposer has downloaded all RFP Addenda.

7.5. Term of Proposal

Submission of a proposal signifies that the proposed services and prices are valid for 365 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

7.6. Revision of Proposal

A proposer may revise a proposal on the proposer's own initiative at any time before the deadline for submission of proposals. The proposer must submit the revised proposal in the same manner as the original. A revised proposal must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any proposer.

At any time during the proposal evaluation process, the Department may require a proposer to provide oral or written clarification of its proposal. The Department reserves the right to make an award without further clarifications of proposals received.

7.7. Errors and Omissions in Proposal

Failure by the Department to object to an error, omission, or deviation in the proposal will in no way modify the RFP or excuse the proposer from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

7.8. Financial Responsibility

The City accepts no financial responsibility for any costs incurred by a firm in responding to this RFP. Submissions of the RFP will become the property of the City and may be used by the City in any way deemed appropriate.

7.9. Proposer's Obligations under the Campaign Reform Ordinance

Proposers must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either

(1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

If a proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the proposer is prohibited from making contributions to:

- the officer's re-election campaign
- a candidate for that officer's office
- a committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a proposer contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

1. **Criminal.** Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
2. **Civil.** Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
3. **Administrative.** Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, proposers should contact the San Francisco Ethics Commission at (415) 252-3100.

7.10. Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFPs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit.

Information provided which is covered by this paragraph will be made available to the public upon request.

7.11. Public Access to Meetings and Records

If a proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the proposer must comply with Chapter 12L. The proposer must include in its proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to proposer's meetings and records, and (2) a summary of all complaints concerning the proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in proposer's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

7.12. Reservations of Rights by the City

The issuance of this RFP does not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right at any time to:

1. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all proposals;
3. Reissue a Request for Proposals;
4. Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;
5. Procure any materials, equipment or services specified in this RFP by any other means; or
6. Determine that no project will be pursued.

7.13. No Waiver

No waiver by the City of any provision of this RFP shall be implied from any failure by the City to recognize or take action on account of any failure by a proposer to observe any provision of this RFP.

7.14. Local Business Enterprise Goals and Outreach

The requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance") shall apply to this RFP.

7.14.1. LBE Subconsultant Participation Goals

The RFP's subcontracting goal for Tier 1B contractors is 15% of the value of the services the City obtains from the Contractor. There are no subcontracting goals for Tier 3 Contractors.

Each firm responding as a Tier 1B proposer to this solicitation shall demonstrate in its response that it has used good-faith outreach to select LBE subcontractors as set forth in S.F. Administrative Code §§14B.8 and 14B.9, and shall identify the particular LBE subcontractors solicited and selected to be used in performing the contract. For each LBE identified as a subcontractor, the response must specify the type of work to be performed, and such information as may reasonably be required to determine the responsiveness of the proposal. LBEs identified as subcontractors must be certified with the San Francisco Contract Monitoring Division at the time the proposal is submitted, and must be contacted by the proposer (prime contractor) prior to listing them as subcontractors in the proposal. Any proposal that does not meet the requirements of this paragraph will be non-responsive.

Proposals which fail to comply with the material requirements of S.F. Administrative Code §§14B.8 and 14B.9, CMD Attachment 2 and this RFP will be deemed non-responsive and will be rejected. During the term of the contract, any failure to comply with the level of LBE subcontractor participation specified in the contract shall be deemed a material breach of contract. Subconsulting goals can only be met with CMD-certified LBEs located in San Francisco.

7.14.2. CMD Forms to be Submitted with Proposal

a. All proposals submitted must include the following Contract Monitoring Division (CMD) Forms contained in the CMD Attachment 2: 1) CMD Contract Participation Form, 2) CMD "Good Faith Outreach" Requirements Form, 3) CMD Non-Discrimination Affidavit, 4) CMD Joint Venture Form (if applicable), and 5) CMD Employment Form. If these forms are not returned with the proposal, the proposal may be determined to be non-responsive and may be rejected.

b. Submit only two copies of the above forms with your proposal. The forms should be placed in a separate, sealed envelope labeled CMD Forms.

If you have any questions concerning the CMD Forms, you contact Selormey Dzikunu, the Contract Monitoring Division Contract Compliance Officer at (415) 558-4059 or Selormey.Dzikunu@sfdpw.org

Section 8: Contract Requirements

8.1. Standard Contract Provisions

The successful proposer will be required to enter into a contract substantially in the form of the Agreement for Professional Services, attached hereto as Appendix C. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsement, surety bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another firm and may proceed against the original selectee for damages.

Proposers are urged to pay special attention to the requirements of Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits, (§34 in the Agreement); the Minimum Compensation Ordinance (§43 in the Agreement); the Health Care Accountability Ordinance (§44 in the Agreement); the First Source Hiring Program (§45 in the Agreement); and applicable conflict of interest laws (§23 in the Agreement), as set forth in paragraphs B, C, D, E and F below.

8.2. Nondiscrimination in Contracts and Benefits

The successful proposer will be required to agree to comply fully with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Chapter 12C requires nondiscrimination in contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the CMD's website at <http://sfgsa.org/index.aspx?page=5364>.

8.3. Minimum Compensation Ordinance (MCO)

The successful proposer will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements. For the contractual requirements of the MCO, see §43 in the Agreement.

For the amount of hourly gross compensation currently required under the MCO, see www.sfgov.org/olse/mco. Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract.

Additional information regarding the MCO is available on the web at:
<http://sfgsa.org/index.aspx?page=403>

8.4. Health Care Accountability Ordinance (HCAO)

The successful proposer will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at:

<http://sfgsa.org/index.aspx?page=407>

8.5. First Source Hiring Program (FSHP)

If the contract is for more than \$50,000, then the First Source Hiring Program (Admin. Code Chapter 83) may apply. Generally, this ordinance requires contractors to notify the First Source Hiring Program of available entry-level jobs and provide the Workforce Development System with the first opportunity to refer qualified individuals for employment.

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at www.sfgov.org/moed/fshp.htm and from the First Source Hiring Administrator, (415) 401-4960.

8.6. Conflicts of Interest

The successful proposer will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The successful proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the successful proposer might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful proposer that the City has selected the proposer.

Section 9: Protest Procedures

9.1. Protest of Non-Responsiveness Determination

Within five (5) working days of the City's issuance of a notice of non-responsiveness, any consultant firm that has submitted a response and believes that the City has incorrectly determined that its response is non-responsive may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth (5th) working day following the City's issuance of the notice of non-responsiveness. The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Respondent, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

9.2. Protest of Establishment of Pre-Qualified Consultant List

Within five (5) working days of the City's issuance of a notice of intent to establish a pre-qualified consultant list, any consultant firm that has submitted a responsive response and believes that the City has incorrectly selected another Respondent for pre-qualification may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth (5th) working day after the City's issuance of the notice of intent to establish a pre-qualified consultant list.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Respondent, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

9.3. Delivery of Protests

All protests must be received by the due date. If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the City received the protest. Protests or notice of protests made orally (e.g., by telephone) or by FAX will not be considered.

Protests must be delivered in writing via email to:

Reference RFP 95270-B, Technology Marketplace
Email: Computer.Store@sfgov.org

Appendix B Standard Forms

Before the City can award any contract the proposer/contractor must file three standard City forms (items 1-3 on the chart). Because many contractors have already completed these forms the City has not included them in the RFP package. Instead, this Appendix describes the forms, where to find them on the Internet (see bottom of page 2), and where to file them. If a proposer/contractor cannot get the documents from the Internet, the contractor should call (415) 554-6743 or e-mail OCA at oca@sfgov.org and the forms will be faxed, mailed or e-mailed.

If a contractor has already filled out items 1-3 (see note under item 3) on the chart, **the contractor should not do so again unless the contractor's answers have changed.** To find out whether these forms have been submitted, the contractor should call Vendor File Support in the Controller's Office at (415) 554-6702.

If a proposer/contractor would like to apply to be certified as a local business enterprise, it must submit item 4. To find out about item 4 and certification, the contractor should call GSA Contract Monitoring Division at: (415) 581-2310.

Item	Form name and Internet location	Form	Description	Return the form to; For more info
1.	Request for Taxpayer Identification Number and Certification http://sfgsa.org/index.aspx?page=4762	W-9	The City needs the contractor's taxpayer ID number on this form. If a contractor has already done business with the City, this form is not necessary because the City already has the number.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102 (415) 554-6702
2.	Business Tax Declaration http://sfgsa.org/index.aspx?page=4762	P-25	All contractors must sign this form to determine if they must register with the Tax Collector, even if not located in San Francisco. All businesses that qualify as "conducting business in San Francisco" must register with the Tax Collector	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102 (415) 554-6702

3.	S.F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits http://sfgsa.org/index.aspx?page=4762	CMD -12B- 101	Contractors tell the City if their personnel policies meet the City’s requirements for nondiscrimination against protected classes of people, and in the provision of benefits between employees with spouses and employees with domestic partners. Form submission is not complete if it does not include the additional documentation asked for on the form. Other forms may be required, depending on the answers on this form. Contract-by-Contract Compliance status proposers must fill out an additional form for each contract.	Contract Monitoring Division 30 Van Ness, #200 San Francisco, CA 94102 (415) 581-2310
4.	LBE Certification Application http://www.sfgov.org/CMD	LBE	Local businesses complete this form to be certified as LBEs. Certified LBEs receive a bid discount pursuant to Chapter 14B when bidding on City contracts. To receive the bid discount, you must be certified by the proposal due date.	Contract Monitoring Division 30 Van Ness, #200 San Francisco, CA 94102 (415) 581-2310

Forms are also available on the internet at the following locations:

Office of Contract Administration

Homepage: <http://sfgsa.org/index.aspx?page=359>
OCA forms: Click on: “How To Qualify To Do Business With The City”

Contract Monitoring Division:

Homepage: <http://www.sfgov.org/CMD>
Equal Benefits forms: <http://sfgsa.org/index.aspx?page=5359>
LBE certification form: <http://sfgsa.org/index.aspx?page=6130>

Appendix A

General Administrative Requirements: Scope of Work

This Scope of Work is used as a general guide for procedures for ordering products and services under the current Technology Store. New guidelines and procedures will be developed for the new Technology Marketplace. Although they should be similar, procedures are subject to change and this Scope of Work is not intended to be a complete list of all work necessary under the Agreement.

It is anticipated that the procedures for ordering products and services under the Technology Marketplace may be revised as follows:

- The dollar threshold for orders that will require competitive quotations may be significantly reduced.
- The LBE bid discount will apply to competitive solicitations conducted within the Tier 2 Technology Marketplace contracts.

A. Summary of the quotation and ordering process

This section describes generally how the day-to-day operations of the Technology Store work. These draft procedures are subject to change. Below is a summary of the current quotation and ordering process:

1. A City Department emails a Technology Store vendor and requests a written quotation for products or services.
 - a. For high-dollar orders, Purchasing requires Departments to seek at least three quotations. Under the current Technology Store, \$100,000 is the threshold defining high-dollar orders. This \$100,000 threshold could change with the new Technology Marketplace, and the threshold could change during the life of the new contract. For orders exceeding \$100,000 subcontracting information is also required by CMD.
 - b. For medium-dollar orders, Purchasing encourages Departments to request quotations from more than one Technology Store Contractor.
 - c. For low-dollar orders Departments should first look to a Micro LBE if possible. Purchasing does not require Departments to seek more than one quotation, but encourages it.
2. The Contractor completes the quotation and e-mails it to the Department.
3. The Department submits the quotation to the Department of Technology (“DT”) for review. If the quotation contains any services, the quotation is sent to Union Local 21 for review and comment.

Appendix A

4. Once approved, Purchasing creates the Purchase Order and transmits it to the Contractor.

B. Ordering, delivery, invoicing and related procedures

1. Preparing the quotation

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

2. Ordering

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

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

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

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

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

3. Delivery

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

Appendix A

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

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

All products shall be delivered inside the building.

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

4. Invoicing

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

5. Return rights

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

6. Cancellation

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

7. Title and Warranties

a. Warranty Service

Appendix A

Contractors shall pass on all warranties offered by manufacturers to the City on all products within 48 hours (excluding weekends) of delivery to City. The Contractor must also offer any additional warranty services offered by a manufacturer for purchase.

b. Passage of title

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

8. Software Licenses

All software licenses procured through the Technology Marketplace shall be passed on to the City within 48 hours (excluding weekends) of delivery and the City must be eligible for all benefits of ownership including free services provided under manufacturer's warranties within 48 hours (excluding weekends) of delivery of software license. Failure to comply with any of the above may result in irreparable harm to the City and a \$100 per day liquidated damage will be assessed from the date that the issue is first reported by the City.

C. Communications with the City

1. General communications with the City

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

Contractors must provide a toll-free number to accommodate telephone inquiries staffed by adequate personnel to provide prompt, courteous, and informed answers to customer inquiries within two hours of the customer's initial call. Contractors must offer a "Help Desk" option to Technology Marketplace clients.

Appendix A

2. E-mail

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

3. Account Manager

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

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

D. General product policies

1. New products

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

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

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

2. Prohibited products and minimum specifications

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

Appendix A

specifications may be suspended from selling to the City under this Agreement for a period of up to 3 months.

3. Environmentally preferable product purchasing

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

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

E. Maintenance and Repair

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

F. Consulting and Professional services projects

1. General

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

A Contractor must submit a detailed Scope of Work defining any consulting or professional services project requested by a Department. The Scope of Work may be subject to approval by DT and may be subject to other reviews such as Local 21, before the project will be

Appendix A

permitted to proceed. As applicable, the City may request that the project include a transition plan detailing how the project will eventually be transitioned to City personnel, including a designation of City employees and training plans.

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

2. Projects over \$100,000

2.1 The Contractor must submit the following to the requesting Department:

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

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

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

- a. Estimated cost
- b. Project complexity
- c. Estimated time
- d. Other aspects of the project deemed relevant by the City

Appendix A

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

- a. The ordering Department
- b. COIT and/or DT
- c. Contract Monitoring Division (“CMD”)
- d. The Technology Marketplace Contractor
- e. All project sub-contractors

G. Pricing policies

1. Pricing

All Technology Marketplace Contractors will be required to extend their most favorable pricing for products and services to the City during the term of the Agreement. This most favorable pricing must be at least equivalent to the pricing that the Contractor makes available to major companies or other public entities comparable in size and/or requirements to the City.

2. Verification of Contractor’s prices

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

3. Violation of pricing requirements

Contractor will abide by the pricing policy of Section G.1. If Contractor is found to charge prices higher than those agreed upon in this Agreement then Contractor must reimburse the City for the excess charges and Contractor may be prohibited from doing business with the City for a period of up to 3 months. If upon a second inspection, Contractor is found to still be charging the City prices higher than those agreed upon in this Agreement, the City in its sole and absolute discretion may terminate this Agreement.

Appendix A

4. Pricing offered to other customers

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

5. Mandatory federal and state fees

Contractor shall be responsible for collecting applicable federal and state mandatory fees with no additional cost mark-up to City, and shall be responsible for remitting the fees to the appropriate agency, including, but not limited to, the California Electronic Waste Recycling Fee: <http://www.boe.ca.gov/sptaxprog/ewaste.htm>.

6. Payment for Travel Expenses and Other Direct Costs (ODC)

The need for travel under this Agreement or ODCs shall be approved in advance of the date of travel in writing by a memo stating the dates of the travel, the purpose, the planned expenses by person, with the City's Project Manager's dated signature indicating approval. Reimbursable expenses shall include actual direct costs (with no mark up) of expenses directly incurred by Contractor. Payments will be made by City to Contractor within 30 days after the City has received Contractor's invoice for expenses, submitted in compliance with the United States General Services Administration per diem rates (CONUS) for San Francisco at <http://www.gsa.gov>.

The following items will be eligible for reimbursement as ODCs:

a. Contractor's out-of-town travel ("out-of-town" shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, Solano);

b. Contractor's out-of-town meal, travel and lodging expenses for project-related business trips, including, but not limited to:

1) Rental vehicle: Contractor must select the most economical rental agency and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented;

2) Personal vehicle use: Contractor will be paid per mile as established by the United State Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties. Contractor shall submit to the City an approved mileage log with his/her expense sheet;

3) Contractor meal and lodging expenses shall be reasonable and actual but limited to CONUS per diem rates.

Appendix A

Anything not listed above is not eligible for reimbursement.

H. Cooperative Agreement

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

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

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

I. Operations, personnel and support

Unless otherwise indicated, Contractors must meet the following requirements at the time the proposal is submitted and for the duration of the Agreement:

1. Offices

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

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

2. Training and product information

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

J. Leasing and financing

In consultation with the City’s Office of Public Finance, the City may elect to pay for Technology Store acquisitions through tax-exempt lease-purchase financing. The City may provide such financing itself or acquire third party financing, under such terms, conditions and

Appendix A

interest rates as may be agreed upon between the parties for each financed transaction. Contractors agree to this type of order and payment method.

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

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

K. Reports

1. Monthly sales reports

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

2. LBE report

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

3. Proposed subcontractors report

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

Appendix C

**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

[insert name of contractor]

This Agreement is made this **[insert day]** day of **[insert month]**, 20 **[insert year]**, in the City and County of San Francisco, State of California, by and between: **[insert name and address of contractor]**, hereinafter referred to as “Contractor,” and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing.”

Recitals

WHEREAS, the Office of Contract Administration (“Department”) wishes to procure computer hardware, software, system design, maintenance, training, other consulting services and other technology products; and,

WHEREAS, a Request for Proposal (“RFP”) was issued on **[insert date]**, and City selected Contractor as a qualified scorer pursuant to the RFP; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number **[insert PSC number]** on **[insert date of Civil Service Commission action]**;

WHEREAS, approval for this Agreement was obtained when the Board of Supervisors approved resolution number _____ on _____.

Now, THEREFORE, the parties agree as follows:

DEFINITIONS:

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

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

Appendix C

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

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

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

CONTROLLER: Controller of the City and County of San Francisco.

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

HARDWARE: Refers to physical devices and components that make up a computing system or any technology based solution such as facility security systems, multimedia video and sound systems, and fleet management systems which may include but is not limited to internal components such as CPUs, power supplies, hard drives, fans, heat sinks and video cards or external components such as webcams, microphones, routers, network switches, data cables, monitors, battery back-ups, printers, speakers and card readers.

HARDWARE MAINTENANCE SERVICE: Refers to maintenance that is either optional or required to ensure that the hardware remains operational and continues to satisfy user requirements. Hardware maintenance may include but is not limited to parts replacement, hardware warranty upgrades and technical support.

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

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

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

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

Appendix C

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

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

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

SOFTWARE: Refers to organized collections of computer data and instructions which may include but is not limited to System software and Application software and programs used for Cloud Computing, Software-as-a-Service (SaaS) solutions, software licenses and software subscription services.

SOFTWARE MAINTENANCE: Refers to maintenance that is either optional or required to ensure that the software remains operational and continues to satisfy user requirements. Software maintenance may include but is not limited to software updates, patches, upgrades and technical support.

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

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

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

UNAVOIDABLE DELAY: An interruption of the work beyond the control of Contractor and which interruption the Contractor could not have avoided by the exercise of care, prudence, foresight and diligence. Such delays include and are limited to acts of God; acts of the public enemy; adverse weather conditions; fires; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sitdowns; slowdowns; labor shortages; inability of Contractor to procure labor; material shortages; inability of Contractor to procure material; fuel shortages; freight embargoes; accidents; acts of a governmental agency; priorities or privileges established for the manufacture, assembly or allotment of materials by order, decree or otherwise of the United States or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority; changes in the work ordered by the Ordering department, insofar as they necessarily require additional time in which to complete the entire work; the prevention by the City and County of a Contractor from

Appendix C

commencing or prosecuting the work; the prevention of a Contractor from commencing or prosecuting the work because of the acts of others, excepting the Contractor's subcontractors; the prevention of a Contractor from commencing or prosecuting the work because of the failure of the City and County to furnish the necessary materials, when required by the terms of an Order and when requested by the Contractor in a manner provided in the Order; and inability to procure or failure of public utility service. The duration of Unavoidable Delays shall be limited to the extent that the commencement, prosecution and completion of the work are delayed thereby, as determined by the Ordering Department.

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

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

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from **[insert beginning date]** to **[insert termination date]**. The Agreement may be extended with two (2) options to extend the contract for up to one (1) year each at the sole and absolute discretion of the City.

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

4. Services Contractor Agrees to Perform. The Contractor agrees to perform the services provided for in Appendix A, "General Administrative Requirements: Scope of Work," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation. Compensation shall be made by Ordering Departments in accordance with the terms of each Authorization for an Order. In no event shall the amount of this Agreement exceed exceed **[insert whole dollar amount in numbers and words -- no pennies and no ".00"]**. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Ordering Department or Purchasing as being in accordance with this Agreement, limited to the total of the Order that gave rise to such event. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of CMD Progress Payment Form If Progress Payment Form is not

Appendix C

submitted with Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the omission. If Contractor's failure to provide CMD Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until CMD Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using CMD Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

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

7. Payment; Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Once Contractor's Invoice is approved by City, payment to Contractor will be made via an Automated Clearing House (ACH) payment. (See www.sfgov.org/ach).

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

9. Disallowance. If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded

Appendix C

from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

10. Taxes

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

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

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

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

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

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

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

12. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City’s reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City’s request, must be supervised by Contractor. Contractor shall commit

Appendix C

adequate resources to complete the project within the project schedule specified in this Agreement.

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

14. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this

Appendix C

Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City.

Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorney's fees, arising from this section.

15. Insurance

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

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

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

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

4) Professional liability insurance including Technology Errors and Omissions. Contractor shall obtain and maintain throughout the duration of the Agreement, technology errors and omissions liability coverage with limits of not less than \$1,000,000 per occurrence/loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services or failure of any product to perform as defined in this Agreement and shall also provide coverage for the following risks:

i. Liability arising from Contractor's or Subcontractor's theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers stored or transmitted in electronic form.

ii. Network security liability arising from the Contractor's or Subcontractor's unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks.

iii. Liability arising from the introduction of computer virus by Contractor or Subcontractor into, or otherwise causing damage to the City or third person's computer system, network, or similar computer related property and the data, software, and programs thereon.

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

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

Appendix C

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

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

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

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

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

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

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

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

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

k. Any of the terms of conditions of this Section 15 may be waived by the City's Risk Manager in writing, and attached to this Agreement as Appendix C. Such waiver is fully incorporated herein. The waiver shall waive only the requirements that are expressly identified and waived, and under such terms and conditions as stated in the waiver.

Appendix C

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

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

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

19. Delays; Unavoidable Delays; Liquidated Damages.

a. Delays

1) Prior to commencing a project end-user departments and Contractor shall develop a project timeline and scope of work designating the Contractor's responsibility for each phase of the project and the City's responsibilities if any. Any delays encountered by Contractor or City in

Appendix C

the performance of this Agreement will be excused if and to the extent such delays are deemed unavoidable as determined by the department head administering the project.

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

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

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

b. Liquidated Damages

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

20. Default; Remedies

Appendix C

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

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

- | | |
|---|---------------------------------------|
| 8. Submitting False Claims; Monetary Penalties. | 30. Assignment |
| 10. Taxes | 37. Drug-free workplace policy |
| 15. Insurance | 53. Compliance with laws |
| 24. Proprietary or confidential information of City | 57. Protection of private information |

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

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

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

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

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

21. Termination for Convenience

Appendix C

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

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

- 1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- 2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- 3) Terminating all existing orders and subcontracts.
- 4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- 5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- 6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- 7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

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

- 1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- 2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
- 3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

Appendix C

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

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

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

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

22. Rights and Duties upon Termination or Expiration

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

- | | |
|---|---|
| 8. Submitting false claims | 27. Works for Hire |
| 10. Taxes | 28. Audit and Inspection of Records |
| 11. Payment does not imply acceptance of work | 48. Modification of Agreement. |
| 13. Responsibility for equipment | 49. Administrative Remedy for Agreement Interpretation. |
| 14. Independent Contractor; Payment of Taxes and Other Expenses | 50. Agreement Made in California; Venue |
| 15. Insurance | 51. Construction |
| 16. Indemnification | 52. Entire Agreement |
| 17. Incidental and Consequential Damages | 56. Severability |
| 18. Liability of City | 57. Protection of private information |
| 24. Proprietary or confidential information of City | |
| 26. Ownership of Results | |

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and

Appendix C

to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

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

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

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

To City: **[insert name or title of department contact person, name of department, mailing address, and e-mail address; fax number is optional]**

To Contractor: **[insert name of contractor, mailing address, and e-mail address; fax number is optional]**

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

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

27. Works for Hire. If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire

Appendix C

as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

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

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

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

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

32. Consideration of Criminal History in Hiring and Employment Decisions

a. 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 www.sfgov.org/olse/fco. A partial listing of some of Contractor’s obligations under Chapter 12T is set forth in this Section. 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.

Appendix C

b. 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, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and 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.

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

33. Local Business Enterprise Utilization; Liquidated Damages

Appendix C

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

b. **Compliance and Enforcement**

1) **Enforcement.** If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor’s net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City’s Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the “Director of CMD”) may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor’s LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

2) **Subcontracting Goals.** The LBE subcontracting participation goal for this contract is **15% of the total value of services procured under this Agreement.** Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the CMD Progress Payment Form and the CMD Payment Affidavit. Failure to provide the CMD Progress Payment Form and the CMD Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the CMD Payment Form and the CMD Subcontractor Payment Affidavit are provided by Contractor. Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

Appendix C

3) **Subcontract Language Requirements.** Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors. Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of CMD and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction. Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of CMD or the Controller upon request.

4) **Payment of Subcontractors.** Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of CMD in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount. Contractor further agrees, within ten working days following receipt of payment from the City, to file the CMD Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

34. **Nondiscrimination; Penalties**

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

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

c. **Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San

Appendix C

Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contracts Monitoring Division (formerly ‘Human Rights Commission’).

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

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

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

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

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

39. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities

Appendix C

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

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

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

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

Appendix C

or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

43. Requiring Minimum Compensation for Covered Employees

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

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

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

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

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

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

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement

Appendix C

for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

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

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

44. Requiring Health Benefits for Covered Employees

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

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

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

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

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

Appendix C

and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

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

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

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

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

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

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

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

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

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

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference.

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

b. First Source Hiring Agreement.

Appendix C

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

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

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

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

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

Appendix C

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

6) Set the term of the requirements.

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

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

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

c. **Hiring Decisions**

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

d. **Exceptions**

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

e. **Liquidated Damages.**

Contractor agrees:

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

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

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

Appendix C

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

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

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

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

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

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

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

f. **Subcontracts.**

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

46. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this

Appendix C

section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

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

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

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

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

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

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

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

54. Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for

Appendix C

services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

55. Reserved. (Supervision of Minors)

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

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

58. Reserved.

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

60. Reserved. (Slavery Era Disclosure)

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

62. PCI Requirements. Contractors providing services and products that collect, transmit or store cardholder data, are subject to the following requirements:

Appendix C

a. Applications shall be compliant with the Payment Application Data Security Standard (PA-DSS) and validated by a Payment Application Qualified Security Assessor (PA-QSA). A Contractor whose application has achieved PA-DSS certification must then be listed on the PCI Council's list of PA-DSS approved and validated payment applications.

b. Gateway providers shall have appropriate Payment Card Industry Data Security Standards (PCI DSS) certification as service providers (<https://www.pcisecuritystandards.org/index.shtml>). Compliance with the PCI DSS shall be achieved through a third party audit process. The Contractor shall comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs.

c. For any Contractor that processes PIN Debit Cards, payment card devices supplied by Contractor shall be validated against the PCI Council PIN Transaction Security (PTS) program.

d. For items 63(a) to 63(c) above, Contractor shall provide a letter from its qualified security assessor (QSA) affirming its compliance and current PCI or PTS compliance certificate.

e. Contractor shall be responsible for furnishing City with an updated PCI compliance certificate 30 days prior to its expiration.

f. Bank Accounts. Collections that represent funds belonging to the City and County of San Francisco shall be deposited, without detour to a third party's bank account, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector.

63. Order of Precedence. In case of discrepancy or ambiguity in the terms or conditions of this Agreement, the following order of precedence shall prevail:

- 1) This Agreement
- 2) Appendix A [General Administrative Requirements: Scope of Work (SOW)]
- 3) Contractor's Proposal
- 4) Request for Proposal (RFP) 95270-B.

64. Appendices. The following appendices are hereby attached and incorporated into this Agreement as though fully set forth herein and together form the complete Agreement between the parties. Contractor acknowledges and agrees that the terms and conditions of Appendix D shall control over the applicable City purchases.

- A: General Administrative Requirements: Scope of Work
- B. The RFP, all Addenda, and Contractor's response to the RFP, are attached and incorporated herein by reference as though fully set forth herein.
- C. Insurance Waiver
- D. Sample Agreements to be executed as applicable on a per project basis, substantially in the form attached:
 - i. P-545 Software License Agreement
 - ii. P-540 Software Maintenance Agreement
 - iii. P-542 Software Development Agreement

Appendix C

- iv. P-500 Professional Services Agreement
- v. P-530 Equipment Maintenance Agreement
- vi. Software as a Service Agreement
- vii. Financing Agreement

Appendix C

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

CITY

Recommended by:

[name]
[title]
[department]

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
[name of Deputy City Attorney]
Deputy City Attorney

Approved:

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

CONTRACTOR

[company name]

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

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

[name of authorized representative]
[title]
[optional: address]
[optional: city, state, ZIP]

City vendor number: [vendor number]

Appendix C

Appendix A

General Administrative Requirements: Scope of Work

Appendix C

Appendix B

The RFP, all Addenda, and Contractor's response to the RFP, are attached and incorporated herein by reference as though fully set forth herein.

Appendix C

Appendix C
Insurance Waiver (if applicable)

Appendix C

Appendix D

Sample Agreements to be executed as applicable on a per project basis, substantially in the form attached:

- i. P-545 Software License Agreement
- ii. P-540 Software Maintenance Agreement
- iii. P-542 Software Development Agreement
- iv. P-500 Professional Services Agreement
- v. P-530 Equipment Maintenance Agreement
- vi. Software as a Service Agreement
- vii. Financing Agreement

Appendix D

**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**

**Software Development Agreement
between the City and County of San Francisco and**

[insert name of contractor]

WHEREAS, a Request for Proposal ("RFP") was issued on **[insert date]**, and City selected Contractor as the highest qualified scorer pursuant to the RFP;

NOW, THEREFORE, City and Contractor agree as follows:

This agreement (the "Agreement") is entered into this **[insert day]** day of **[insert month]**, **[insert year]**, in the City and County of San Francisco, State of California, by and between: **[insert name and address of Contractor]**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the **[insert name of department]** wishes Contractor to provide to City the System described in Appendix A; and,

WHEREAS, Contractor represents and warrants that it is qualified to provide the services required to deliver the System to City as set forth under this Agreement; and,

WHEREAS, approval for said Agreement was obtained from Civil Service Commission by Resolution No. **[insert Resolution number]**, dated **[insert date]**;

Now, THEREFORE, the parties agree as follows:

1. Definitions. Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

ACCEPTANCE	The procedures and performance standards required for Acceptance by City of
TESTS	the Programs and the System as defined herein. These procedures and performance standards are set forth for each phase of System development in Appendix D, the Acceptance Test Plan.

Appendix D

ACCEPTANCE or 2 WINDOW from	The time period specified in Appendix C following completion of Phase 1 during which Contractor must secure Acceptance of the completed phase from City.
AGREEMENT together	This document and all of the accompanying schedules and exhibits, with any future written and executed amendments.
AUTHORIZATION	Either a Term Purchase Agreement, Contract Order, or Purchase Order of the City, properly executed by the [insert name of department] and Purchasing, and certified by the Controller for the specific funding of this Agreement or any modification thereof.
CRITICAL MILESTONES	Those milestones specified in the Project Schedule, Appendix C, as Critical Milestones after which liquidated damages apply for failure to complete performance in accordance with this Agreement.
DELIVERABLES	Those items described and itemized in Appendix [insert Appendix letter] , which items Contractor commits to provide to City on the dates specified in the Implementation Plan.
DESIGN implement the SPECIFICATIONS	The written design specifications to be prepared by Contractor to implement the Functional Specifications. The Design Specifications shall include descriptions of each Program to be developed hereunder together with descriptions of the hardware and software environment in which such Programs may be operated and the files or databases, if any, with which such Programs shall function.
DOCUMENTATION	Technical publications relating to use of the System, such as reference, installation, administrative, maintenance, and programmer manuals, provided by Contractor to City, all of which are fully described and itemized in Appendix B.
EQUIPMENT	The central processing unit[s] and associated peripheral devices [or, computer hardware] on which the Programs will operate and with which the Programs must be compatible, to be purchased [or, leased] by Contractor for City [or, provided by City] .

Appendix D

FUNCTIONAL SPECIFICATIONS	<p>The written description of City’s requirements, operations, and procedures, which document is to be prepared by Contractor, and upon approval by City shall form the basis for the Design Specifications as defined herein.</p> <p>The written description of City’s requirements prepared by the City and attached hereto as both the Performance Specifications and the Functional Specifications for this Agreement in Appendix A. Such description shall form the basis for the Design Specifications as defined herein.</p>
PERFORMANCE SPECIFICATIONS	<p>The description of the minimum System characteristics and performance which must be achieved by the Functional Specifications. Such description is set forth in Appendix A.</p>
PROGRAMS	<p>The software developed by Contractor and delivered to City, in the form of machine-executable instructions, to operate on the Equipment for purposes of accomplishing the functional capabilities set forth in Program Specifications, Appendix A.</p>
PROJECT Critical SCHEDULE	<p>The schedule for Contractor’s completion of all phases of Work, and the Milestones associated with such completion, as specified in Appendix C.</p>
REVIEW PERIOD	<p>The time period specified in Appendix C during which City shall review the completed Work of Phase 1 or 2 and give notice to Contractor of its acceptance or rejection of the completed phase.</p>
SYSTEM	<p>The Programs prepared by Contractor for City and the Equipment on which those Programs operate, the combination of which shall satisfy the requirements set forth in the Performance Specifications.</p>
WORK	<p>The implementation, assembly, installation, optimization, and integration as required by this Agreement, whether completed or partially completed, including all labor, materials, and services provided, or to be provided, by Contractor to fulfill its obligations hereunder. The Work, therefore, constitutes all of the requirements for providing the System to the City.</p>

Whenever the words “as directed”, “as required”, “as permitted”, or words of like effect are used, it shall be understood as the direction, requirement, or permission of the **[insert name of department]**. The words “sufficient”, “necessary”, or “proper”, and the like, mean sufficient, necessary or proper in the judgment of the **[insert name of department]**, unless otherwise indicated by the context.

2. 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

Appendix D

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 of this Agreement.

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

3. Term of the Agreement. The term of this Agreement shall be from **[insert start date]** to **[insert end date]**.

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

5. Software Implementation.

a. Program Development. Subject to the terms and conditions of this Agreement, and in consideration for the payments to be made, Contractor agrees to design, develop, and install the Programs in the following discrete and sequential phases. In Phase 1, Contractor will develop Functional Specifications; in Phase 2, Contractor will create the Design Specifications; in Phase 3, Contractor will code the Programs, install the completed System at City's site, and deliver the Documentation for the System. The Work covered under each phase is specified in **[specify the document or Appendix which describes the scope of work]**. Upon completion of Phase 3, the System will be subject to Acceptance Testing to verify conformity with the Design Specifications.

b. Interpretation of the Specifications. The City hereby acknowledges that the Functional Specifications will, upon acceptance by the City, provide the basis for the Design Specifications, and that the Design Specifications will, upon acceptance by the City, provide the basis for the coding and installation of the Programs. In the event of a variance between the written proposal Contractor submitted in response to City's request for the services to be performed under this Agreement (the "Proposal") and the Functional Specifications, the Functional Specifications shall be determinative. In the event of a variance between the Functional Specifications and the Design Specifications, the Design Specifications shall be determinative.

c. Interpretive Differences. In the event City and Contractor differ in their interpretations of the Proposal, Functional Specifications, Design Specifications, or Acceptance Tests, City's interpretation, if reasonable, shall be determinative.

Appendix D

d. Change Order Requests. All change order requests by the City shall be made in writing by the City's project manager. Within **[insert number]** days following its receipt of a change order request, Contractor will submit to City a written cost estimate, which shall include any adjustments to the project price, the Project Schedule, and the Acceptance criteria. Additional services by Contractor made necessary by the City's change order request shall be billed at Contractor's then current consulting rates. City will notify Contractor in writing if it wishes to proceed with the change order within **[insert number]** days.

6. Acceptance Procedure.

a. Acceptance of Phases 1 and 2. Upon completion of Phases 1 and 2 of Program development, City shall, within the Review Period, review and give notice to Contractor of City's acceptance or rejection of the specifications of each completed phase of Work. Should City reject either the Phase 1 or 2 Work, then City is entitled to another Review Period upon receipt from Contractor of the revised Phase 1 or 2 specifications. In the event that Contractor fails to provide Phase 1 or 2 Work which meets the Acceptance Criteria of this Agreement during the Acceptance Window, City may, at its option, assess Liquidated Damages per Section 28 of this Agreement and/or terminate this Agreement under Section 8(C), Termination for Cause.

b. Final Acceptance of System. Upon completion of Phase 3, City and Contractor shall conduct Acceptance Testing of the System in accordance with the Acceptance Test Plan. City will not be deemed to have Accepted any Program or the System until Contractor receives written notice of Acceptance from City.

c. Contractor's Assistance in Acceptance Tests. Contractor must furnish all materials, equipment, and technical assistance necessary to conduct the Acceptance Tests. Test Equipment provided by Contractor for performance of the Acceptance Tests shall be currently certified as "calibrated" by the test equipment manufacturer, or its authorized calibration service agent.

d. Failure to Pass Acceptance Tests. In the event that City determines that the System fails to meet the standards set forth in the Acceptance Test Plan, City shall promptly report to Contractor each deficiency, and Contractor will correct the reproducible aspects of the problem or failure within **[insert number]** days from date of Contractor's receipt of notice of the problem or failure. Problems or failures that do not re-occur or cannot be repeated by Contractor, or by the City in Contractor's presence, shall not be considered a failure. In the event that Contractor cannot achieve System Acceptance within **[insert number]** days following the commencement of Acceptance Testing, Contractor shall be in default under this Agreement and, in addition to those remedies set forth in Section 6 entitled "Termination," City is further entitled to a refund of all payments made to Contractor under this Agreement.

Appendix D

e. **Parallel Processing.** The parties contemplate that parallel processing will be used until both the Programs [or, the System] and its backup have completed the Acceptance Tests.

7. Documentation Delivery and Training.

a. **Documentation Delivery.** Contractor will deliver [insert number] copies of the completed Documentation for the Programs [or, the System] in accordance with the Documentation description, Appendix B, and the Project Schedule, Appendix C. The City may withhold its issuance of the notice of final Acceptance until City receives the completed Documentation.

b. **City Training.** Contractor will provide up to [insert number] hours of training to [insert number] City personnel at City's [or, Contractor's] premises at no charge [or, at the rates shown in Appendix A]. Upon request by the City, Contractor will provide additional training at its then prevailing rates.

8. Term and Termination/Termination for Convenience.

a. **Project Schedule.** The Project Schedule is set forth in Appendix C and may be amended by mutual agreement between City and Contractor.

(1) **Delays.** To prevent slippage in the completion of the project, Contractor agrees that if such slippage occurs, it will assign additional qualified personnel to the project.

(2) **Time of the Essence.** The parties agree that time is of the essence, and that the System will be developed and implemented in accordance with the Project Schedule.

(3) **Critical Milestones.** Contractor acknowledges and understands that the Project Schedule contains certain time-sensitive milestones (Critical Milestones) that must be attained by certain dates; otherwise, the City will suffer financial harm. Milestones that are Critical Milestones are so indicated in the Project Schedule. Notwithstanding City's ability to assess liquidated damages for Contractor's failure to meet any Critical Milestone, the time period for achieving final Acceptance shall not exceed [insert number] calendar days after initiation of System testing. In addition to any other remedy provided under this Agreement, Contractor's inability to achieve final Acceptance of the System within [insert number] calendar days after the last Critical Milestone will be cause for immediate termination of this Agreement, and City shall be entitled to a full refund of any amounts paid to Contractor under this Agreement.

b. **Progress Reports.** Contractor will provide City with monthly [or, weekly] written status reports advising the City of its progress, which reports will be delivered [insert number] days following the month to which it relates.

c. **Termination for Cause.** In the event Contractor fails to perform any of its obligations under this Agreement, this Agreement may be terminated and all of Contractor's rights hereunder ended. Termination will be effective after ten days written notice to Contractor. No new work will be undertaken after the date of receipt of any notice of termination, or five

Appendix D

days after the date of the notice, whichever is earlier. In the event of such termination, Contractor will be paid for those services performed under this Agreement to the satisfaction of the City, up to the date of termination. However, City may offset from any such amounts due Contractor any liquidated damages or other costs City has or will incur due to Contractor's non-performance. Any such offset by City will not constitute a waiver of any other remedies City may have against Contractor for financial injury or otherwise.

d. Termination for Convenience. City may terminate this Agreement for City's convenience and without cause at any time by giving Contractor thirty days written notice of such termination. In the event of such termination, Contractor will be paid for those services performed, pursuant to this Agreement, to the satisfaction of the City up to the date of termination. In no event will City be liable for costs incurred by Contractor after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not reasonable or authorized under this section. This section shall not prevent Contractor from recovering costs necessarily incurred in discontinuing further work under the contract after receipt of the termination notice.

e. Obligations upon Termination. Upon termination of this Agreement, Contractor will submit an invoice to City for an amount which represents the value of its work or services actually performed prior to the effective date of termination for which Contractor has not previously been compensated, except that with respect to reimbursement for Contractor's services, in no event will the compensation paid for the month in which termination occurs be greater than the scheduled monthly fee multiplied by a fraction, the numerator of which will be the days in the month elapsed prior to the termination and the denominator of which shall be 31. Upon approval and payment of this invoice by City, City shall be under no further obligation to Contractor monetarily or otherwise.

f. Survival. This section and the following sections of this Agreement shall survive termination or expiration of this Agreement:

- | | | | |
|-----|---|-----|--|
| 10c | Payment Does Not Imply Acceptance of Work | 22. | Confidential Information |
| 10d | Taxes | 23. | Insurance |
| 13. | Property Rights of the Parties | 24. | Indemnification and General Liability |
| 16. | Submitting False Claims; Monetary Penalties | 25. | Incidental and Consequential Damages |
| 17. | Disallowance | 26. | Liability of City |
| 18. | Payment Does Not Imply Acceptance of Work | 31. | Audit and Inspection of Records |
| 19. | Responsibility for Equipment | 47. | Non-Waiver of Rights |
| 20. | Independent Contractor; Payment of Taxes and Other Expenses | 48. | Administrative Remedy for Agreement Interpretation |
| 21. | Warranty | 49. | Agreement Made in California; Venue |
| | | 50. | Construction |
| | | 51. | Entire Agreement |
| | | 54. | Protection of Private Information |

Appendix D

9. Default; Remedies. Each of the following shall constitute an event of default (“Event of Default”) under this Agreement:

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

- 10.d Taxes
- 16 Submitting False Claims; Monetary Penalties
- 22. Confidential Information
- 23. Insurance 22
- 32. Subcontracting.
- 53. Compliance with Laws.
- 54. Protection of Private Information.

Appendix D

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

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

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement. 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.

10. Payments

a. Fixed Price. In consideration for the services rendered under this Agreement and for the rights in the Programs granted hereunder, the City shall pay to Contractor the amount of **[insert dollar amount in numbers and words – no pennies]** in accordance with the attached progress payment schedule. Compensation shall be due and payable within thirty days of the date of invoice. In no event shall the amount of this Agreement exceed **[insert dollar amount in number and words – no pennies]** dollars.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, and products, required under this Agreement are received from Contractor and approved by **[insert name of department]** as being in accordance with this Agreement.

Appendix D

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

b. Retention. The final payment of **[insert percent in words]** percent (**[insert percent in numbers]** %) of the software development and license costs shall be paid **[insert days in words and (numbers)]** days after City issues its notice of Acceptance of the System.

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

d. Taxes

Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor. Contractor recognizes and understands that this Agreement may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

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

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

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

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

Appendix D

11. City Responsibilities

a. City Representative. City will make available to Contractor a qualified project manager who will be authorized to make binding decisions for the City regarding this Agreement and will promptly: (1) review all specifications, technical materials and other documents submitted by Contractor, request necessary corrections, and approve such documents; (2) provide requested City information and data and assume responsibility on the adequacy of the same; (3) advise Contractor of City's requirements; and (4) upon request provide access to City's staff, facility and hardware.

b. City Facilities. [Specify whether the City will be providing facilities or equipment for Contractor's use during the term of the agreement and the conditions upon which access will be granted. For example, security clearances, only pre-approved Contractor personnel, hours of the day, etc.]

c. Data Conversion. [insert City or Contractor] shall be responsible for the timely and accurate conversion of City's data to the format required by the Programs [or, System], and for providing the test data specified in the Acceptance Test Plan [or, Design Specifications].

12. Contractor Staffing and Support Services

a. Project Manager. Contractor shall designate a Project Manager, who shall be accessible by telephone or by electronic pager throughout the duration of the Agreement and shall be available [insert times of days, days of week, and exceptions (e.g., from 9 a.m. to 5 p.m. Monday through Friday, excluding weekends and holidays)]. These hours may be adjusted by mutual agreement of City and Contractor. Throughout the term of this Agreement, whenever the Project Manager is not on site, he or she must be available by electronic pager. Whenever the Project Manager will be unavoidably absent or otherwise unavailable by telephone or electronic pager for more than two hours, then a substitute Project Manager must be designated to respond to telephone calls and pages from the City. Contractor shall use its best efforts to maintain the same Project Manager until final Acceptance of the System. However, if Contractor needs to replace its Project Manager, it shall provide City with written notice thereof at least 45 days prior to the date the Project Manager is to be replaced. Notwithstanding the foregoing, Contractor may appoint temporary Project Managers in connection with short term unavailability, sick leave, or reasonable vacations, provided that Contractor gives City reasonable notification thereof in advance. City may require Contractor to replace its Project Manager, by giving Contractor notification thereof and City's objective reasons therefor.

b. Staffing. Work under this Agreement shall be performed only by competent personnel appropriately trained in technical skills to perform their duties under the supervision of, and in the employment of, Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. The personnel of each party, when on the premises of the other, shall comply with the security and other personnel regulations of the party on whose premises such individual is located.

Appendix D

c. Maintenance Services. Contractor will provide maintenance services for the Programs in accordance with the terms and conditions of its standard maintenance agreement, a copy of which is attached hereto as Appendix B. Such services shall commence upon Acceptance of the Programs by City **[or, upon expiration of the performance warranty provided herein]**.

d. Consulting Services. Upon request by City, Contractor will provide programming, project management, consulting and other related services. The scope and charges for such services shall be the then prevailing best government rate **[or, are specified in Appendix ___]**.

13. Property Rights of the Parties

➔ Choose “a” or “b”

a. License of the Programs. Upon receipt of final payment for all services rendered by Contractor under this Agreement, Contractor hereby grants to City, in perpetuity, an irrevocable, nonexclusive, right and license to use for internal purposes only a machine readable copy of the Programs and Documentation in connection with the City’s business.

➔ Select either “a” above or both “a” and “b” below. If you select only “a”, delete subparagraph “b” in its entirety and redesignate the other subparagraphs.

b. Sale of the Programs. Upon receipt of final payment for the Programs **[or, System]**, Contractor will convey to City good and marketable title to the Programs **[or, the System]** free and clear of all liens, claims and encumbrances.

c. Ownership of Underlying Modules. The foregoing conveyance of title is subject to Contractor’s retention of ownership of all modules developed by Contractor as a utility routine or generalized interface and not specifically for City.

d. City’s Data. Any data or other materials furnished by the City for use by Contractor under this Agreement shall remain the sole property of the City and will be held in confidence in accordance with Section 21 of this Agreement. Such materials shall be returned to City upon Acceptance of the Programs.

e. Ownership of Modifications and Enhancement. Contractor hereby grants to City an exclusive perpetual license to use for internal purposes only the Programs contained in the modifications and enhancements to the software package licensed hereunder to City.

Appendix D

f. Competition. Nothing in this Agreement shall be construed so as to preclude Contractor from developing, using, or marketing software that is competitive with that prepared for City hereunder, irrespective of whether such software is similar in functionality or design or is otherwise related to the Programs developed by Contractor for City pursuant to this Agreement.

g. Royalty Payments. Contractor shall pay to City a royalty of **[insert number in words]** percent (**[insert number]** %) of all fees received by Contractor for the licensing **[or sale]** of the Programs, or portions thereof until the total amount of payments received by City total **[insert amount in words]** dollars (\$ **[insert amount as number]**) at which time such royalty payments shall cease.

14. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

15. Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller. Each invoice must contain a unique identifying number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

16. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code section 21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil

Appendix D

penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) Knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) Conspires to defraud the City by getting a false claim allowed or paid by the City; (d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; (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.

17. Disallowance. In the event Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by City or State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

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

19. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees means that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to Contractor, its employees, City employees or third parties, or to property belonging to any of the above.

20. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's

Appendix D

performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

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

21. Warranty

a. Warranty of Title and Indemnification. Contractor warrants that the Programs developed pursuant to this Agreement will, prior to its transfer to City, be the sole and exclusive property of Contractor. If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the Programs infringes a patent or copyright, or any rights of a third party, or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (infringement), Contractor will hold City harmless and defend such action at its expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the Programs constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement. In the event that a final injunction shall be obtained against City's use of the Programs by reason of Infringement, or in Contractor's opinion City's use of the Programs is likely to become the subject of Infringement, Contractor may at its option and expense (a) procure for City the right to continue to use the Programs as contemplated hereunder, (b) replace the Programs with non-infringing, functionally equivalent substitute Programs, or (c) suitably

Appendix D

modify the Programs to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Programs. If none of these options is reasonably available to Contractor, then this Agreement may be terminated at the option of either party hereto and Contractor shall refund to City all amounts paid under this Agreement for the development and license of the infringing Programs.

b. Warranty of Authority; No Conflict. Each party hereby warrants to the other that it is authorized to enter into this Agreement and that its performance thereof will not conflict with any other agreement.

c. Warranty of Performance. Contractor hereby warrants that when fully implemented, the Programs to be developed and provided under this Agreement shall perform in accordance with the Design Specifications applicable thereto on the System Acceptance date.

22. Confidential Information.

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

b. Survival. These obligations of confidentiality shall survive the termination of the Agreement.

23. Insurance.

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

➔ **The following types and amounts of insurance are those most commonly required in City contracts, but departments should tailor the types and amounts of insurance to the particular risks of each contractor's services. For example, if the contractor would deliver fuel, transport hazardous waste, or operate aircraft, higher policy limits would be necessary. Please contact the City's Risk Manager with specific questions, and do this early in the contracting process, such as before a bid or RFP is made public.**

Any reductions below these coverages require the approval of the City's Risk Manager.

It is important to avoid unnecessarily high insurance requirements, which could be a barrier to small businesses and LBEs doing business with the City.

Appendix D

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

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

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

→ Contractors that must be State-licensed as professionals to perform services, i.e., architects, engineers, certified public accountants, etc., shall provide professional liability insurance, also known as errors-and-omissions coverage. If the contractor is such a professional, then include (4). If the contractor is not such a professional, then omit (4).

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

Contractors that are or will provide the following services, must provide Technology Errors and Omissions Liability: Application Service Providers, Computer Consultants/Engineers, Data Processing or Programming, Data Hosting Services, Internet Services, Software Developers and Computer Systems Management or Data Analysis Services. If Contractor provides such services, then include all of subsection 5) below. If the Contractor does not provide such services, then delete subsection 5) (including subsections). NOTE: Limits of insurance may be increased according to the Scope of Work, risk, and amount of contract.

(5) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

(a) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form;

(b) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(c) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

Appendix D

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

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

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

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

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

e. Should any 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.

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

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

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

You can insert the following subparagraph i. only AFTER a waiver has been granted by the Risk Manager.

i. Notwithstanding the foregoing, the following insurance requirements are waived or modified in accordance with the terms and conditions stated in an Appendix.

Appendix D

24. Indemnification and General Liability. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

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

26. Liability of City. CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 9 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.

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

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

Appendix D

To City: **[insert name or title of department contact person, name of department, mailing address, e-mail address; fax number is optional]**

To Contractor: **[insert name of contractor, mailing address, e-mail address; fax number is optional]**

Any notice of default must be sent by registered mail. Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice.

29. Liquidated Damages. By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 5 herein, are delayed beyond the Critical Milestones as provided in the Project Schedule, Appendix C, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of **[\$[insert amount in numbers; no pennies and no “.00”]** per day for each day of delay beyond the Critical Milestones is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor’s failure to deliver to City within the time fixed or such extensions of time permitted in writing by Purchasing.

30. Bankruptcy. In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect.

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

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

Appendix D

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

34. Local Business Enterprise Utilization; Liquidated Damages

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

c. **Compliance and Enforcement**

1) **Enforcement.** If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor’s net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City’s Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the “Director of CMD”) may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor’s LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

➔ **If the contract will involve the use of subcontracts, then include subparagraphs (2), (3) and (4). If the contract will not involve subcontracts, then omit (2), (3), and (4) and delete the subsection title above, “(1) Enforcement,” but keep the text of the subparagraph.**

Appendix D

2) **Subcontracting Goals.** The LBE subcontracting participation goal for this contract is **[insert number]** %. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the CMD Progress Payment Form and the CMD Payment Affidavit. Failure to provide the CMD Progress Payment Form and the CMD Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the CMD Payment Form and the CMD Subcontractor Payment Affidavit are provided by Contractor. Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

3) **Subcontract Language Requirements.** Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors. Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of CMD and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction. Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of CMD or the Controller upon request.

4) **Payment of Subcontractors.** Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of CMD in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount. Contractor further agrees, within ten working days following receipt of payment from the City, to file the CMD Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

35. Nondiscrimination; Penalties.

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

Appendix D

status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

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

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

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

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

→The contract language, below, implements Chapter 12T of the Administrative Code, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions." Chapter 12T applies to certain contracts/agreements executed or amended in any manner on or after August 13, 2014. To facilitate compliance with Section 12T.3 and provide sufficient notice to prospective contractors, the Office of Labor Standards Enforcement ("OLSE") encourages City contracting agencies to include the new contract language in all applicable contracts/agreements either currently advertised for bids/proposals or that will be advertised for bids/proposals prior to the August 13 operative date. If you have questions regarding the applicability or implementation of Chapter 12T, please contact Donna Mandel of OLSE at 554-4791.

Appendix D

36. Consideration of Criminal History in Hiring and Employment Decisions.

a. 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 www.sfgov.org/olse/fco. A partial listing of some of Contractor’s obligations under Chapter 12T is set forth in this Section. 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.

b. 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, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and 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.

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor’s failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 36(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

Appendix D

g. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

37. MacBride Principles--Northern Ireland. Pursuant to San Francisco Administrative Code Section 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

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

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

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

Appendix D

awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

42. Requiring Minimum Compensation for Employees.

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

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

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

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

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

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

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

Appendix D

period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

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

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

43. Requiring Health Benefits for Covered Employees.

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

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

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

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

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

Appendix D

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

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

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

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

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

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

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

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

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

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

Appendix D

ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference.

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

b. First Source Hiring Agreement.

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

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

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

3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to

Appendix D

participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

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

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

6) Set the term of the requirements.

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

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

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

c. **Hiring Decisions.**

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

d. **Exceptions.**

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

e. **Liquidated Damages.**

Contractor agrees:

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

Appendix D

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

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

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

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

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

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

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

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

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position

Appendix D

improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. **Subcontracts.**

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

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

47. 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.

48. Administrative Remedy for Agreement Interpretation.

a. **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 by negotiation. 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. If agreed by both parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither party will be entitled to legal fees or costs for matters resolved under this section.

b. **Government Code Claims.** 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 Government Code Claim requirements set forth in Administrative Code Chapter 10 and Government Code Section 900, et seq.

49. 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.

Appendix D

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

51. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision.

52. Modifications and Change Orders. The City may at any time, by written order, submit a Change Order to Contractor. Within ten working days of receiving a proposed Change Order, Contractor shall submit to City a written cost estimate, which shall include any adjustments to the **[list if applicable: Project price, the Project Schedule, the Statement of Work, the Acceptance Criteria]** or any other obligations of Contractor, as applicable. All Change Orders must be pre-approved, in writing, by City's Project Manager. Contractor shall not proceed with any work contemplated in any Change Order until it receives written notification to commence such work from City's Project Manager. Contractor shall commence the work contemplated by the Change Order upon receiving written notice from City's Project Manager. If Contractor and City disagree on the effect that a Change Order will have on the **[list if applicable: Project price, the Project Schedule, the Statement of Work, the Acceptance Criteria]**, then Contractor must nevertheless proceed with the work contemplated by the Change Order once City's Project Manager and the Purchaser direct Contractor, in writing, to do so. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

53. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws.

54. Protection of Private Information. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code ("Protection of Private Information"), including the remedies provided. The provisions of Chapter 12M are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12M. Consistent with the requirements of Chapter 12M, Contractor agrees to all of the following: Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

- (1) The disclosure is authorized by this Agreement;
- (2) The Contractor received advance written approval from the Contracting Department to disclose the information; or
- (3) The disclosure is expressly required by a judicial order.

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

Appendix D

conditions or restrictions stated in the approval. Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing. Any failure of Contractor to comply with Chapter 12M shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

55. Graffiti Removal. Reserved.

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

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

Appendix D

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

CITY

CONTRACTOR

Recommended by:

[company name]

[name]
[title]
[department]

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

Approved as to Form:

Dennis J. Herrera
City Attorney

I have read and understood paragraph 37, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

By: _____
[name of Deputy City Attorney]
Deputy City Attorney

Approved:

[name of authorized representative]
[title]
[optional: company name]
[optional: address]
[optional: city, state, ZIP]

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

City vendor number: **[vendor number]**

[Appendices]
[appendix letter and title, if applicable]
A: Performance specifications
B: Documentation
C: Project schedule
D: Acceptance test plan
[if you have received a waiver from the Risk Manager:
[E: Insurance Waiver]

Appendix D

Appendix A

Performance Specifications

Appendix D

Appendix B Documentation

The following is a description of all technical publications relating to use of the System, such as reference, installation, administrative, maintenance, and programmer manuals, and the number of copies of each to be provided by Contractor to City.

Appendix D

Appendix C Project Schedule

1. Start Date: [insert start date]

The date on which the time for completion of Phase 1 shall begin to accrue.

2. Notice to Proceed: [insert number in words and (numbers)] days

The minimum time period of advance notification that City shall give Contractor to notify Contractor that Authorization has been obtained for this Agreement and that Contractor should be ready to begin Work on the Start Date.

3. Phase 1: Preparation of Functional Specifications

a. Time for completion: [insert number in words and (numbers)] days

The length of time following the Start Date during which Contractor shall complete and deliver to City for City's review the following Work:

b. Functional Specifications of the System

[List any additional things Contractor shall complete during Phase 1 and any Critical Milestones associated with this phase.]

c. Review Period: [insert number in words and (numbers)] days

The length of time following delivery to City of the Work specified above, or resubmission of such Work to City following error correction by Contractor, that City shall have to review the completed Work and give notice to Contractor of City's acceptance or rejection of the completed Work.

d. Acceptance Window: [insert number, such as 90 or 120, in words and in (numbers)] days

The time period following completion of Phase 1 during which Contractor must secure Acceptance of that phase from City.

4. Phase 2: Preparation of Design Specifications

a. Time for completion: [insert number in words and (numbers)] days

Appendix D

The length of time following Acceptance by City of the Functional Specifications and other Work produced in Phase 1 during which Contractor shall complete the following Work:

b. Design Specifications of the System

[List any additional things Contractor shall complete during Phase 2 and any Critical Milestones associated with this phase.]

c. Review Period: [insert number in words and (numbers)] days

The length of time following delivery to City of the Work specified above, or resubmission of such Work to City following error correction by Contractor, that City shall have to review the completed Work and give notice to Contractor of City's acceptance or rejection of the completed Work.

d. Acceptance Window: [insert number, such as 90 or 120, in words and in (numbers)] days

The time period of following completion of Phase 2 during which Contractor must secure Acceptance of the completed phase from City.

5. Phase 3: Program Coding, System Installation, and Documentation Delivery

a. Time for completion: [insert number in words and (numbers)] days

The length of time following Acceptance by City of the Design Specifications and other Work produced in Phase 2 during which Contractor shall complete the following Work:

Coding of the Programs for the System

Factory, pre-installation testing of the System by Contractor **[and City, if so desired]**

Installation of the completed System at its final City site

Delivery of Documentation for System

[List any additional things Contractor shall complete during Phase 3 and any Critical Milestones associated with this phase.]

Following completion by Contractor of Phase 3, City and Contractor shall commence performance of the Acceptance Tests.

Appendix D

Appendix D Acceptance Test Plan

Appendix D

Appendix E Insurance Waiver

[Use as appropriate and only if an insurance waiver has been signed and granted by the Risk Manager.]

Appendix E

**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**

SOFTWARE LICENSE AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND

[insert name of contractor]

This agreement (the “Agreement”) is made this _____ day of _____, 20____, in the City and County of San Francisco, State of California, by and between: [insert name and address of Contractor], hereinafter referred to as “Contractor,” and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through its Director of the Office of Contract Administration, hereinafter referred to as “Purchasing.”

Recitals

WHEREAS, the **[insert name of the department]** wishes to license certain software from Contractor; and,

WHEREAS, Contractor represents and warrants that it is qualified to provide such software and services required by City as set forth under this Agreement.

Now, THEREFORE, the parties agree as follows:

1. Definitions. Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Acceptance Notice from the City to Contractor that the Licensed Software meets the specifications contained in the Documentation. City’s Acceptance of the Licensed Software shall be governed by the procedures set forth in Section 7.

Agreement This document and any attached appendices and exhibits, including any future written and executed amendments.

Appendix E

Authorization; Authorization document	This Agreement, a Blanket Purchase Order, Contract Order, or Purchase Order of the City, properly executed by [insert name of the department] and Purchasing, and certified by the Controller for the specific funding of this Agreement or any modification thereof.
Designated CPU	Any central processing unit or attached processor complex, including its peripheral units, described in the Authorization Document. The Authorization Document may designate more than one CPU.
Designated site	The facility or facilities specified in Appendix A, attached hereto and incorporated by reference as though fully set forth herein, or any other facility as the parties may designate from time to time in writing, where the Designated CPU is located.
Documentation	The technical publications relating to the use of the Licensed Software, such as reference, installation, administrative and programmer manuals, provided by Contractor to City.
Licensed software	One or more of the proprietary computer software programs identified in the Authorization Document, all related materials, Documentation, all corrections, patches or updates thereto, and other written information received by City from Contractor, whether in machine-readable or printed form. The Authorization Document may identify more than one software product or more than one copy of any product.
Object code	Machine readable compiled form of Licensed Software provided by Contractor.
Source code	The human readable compliable form of the Licensed Software to be provided by Contractor.
Specifications	The functional and operational characteristics of the Licensed Software as described in Contractor's current published product descriptions and technical manuals

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the **[insert name of the department]**. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the **[insert name of the department]**, unless otherwise indicated by the context.

2. 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

Appendix E

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 of this Agreement.

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

3. Term of the Agreement. Subject to Section 5, the license granted under this Agreement shall commence upon acceptance of the Licensed Software and shall continue in perpetuity unless sooner terminated in accordance with the provisions of this Agreement.

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

5. License

a. Grant of License. Subject to the terms and conditions of this Agreement, Contractor grants City a non-exclusive and non-transferable **[specify perpetual or limited term]** license to use the Licensed Software. City acknowledges and agrees that the Licensed Software is the proprietary information of Contractor and that this Agreement grants City no title or right of ownership in the Licensed Software.

Contractor agrees that in the event it discontinues its obligations under the terms of this Agreement, except as expressly provided for in Section 30(Termination), or ceases to market and/or provide maintenance and support for the Licensed Software, and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, it will provide City, without charge, one (1) copy of the then-current Source Code for all of the programs and all supporting Documentation for the Licensed Software then operating and installed at City's locations. If City should obtain the Source Code and the Documentation pursuant to this section, the only use made of the Source Code and the Documentation will be for the proper maintenance of the Licensed Software in connection with City's use of the Licensed Software as provided for, and limited by, the provisions of this Agreement.

In furtherance of its obligations as stated above, Contractor will provide to City a copy of the Source Code which corresponds to the most current version of the Licensed Software. Contractor agrees to update, enhance or otherwise modify such Source Code promptly upon its release of a new version of the Licensed Software to its other Licensees such that the Source Code is maintained as corresponding to the newest released version of the Licensed Software. City's right to possession of the Source Code will be governed by Appendix A.

b. Restrictions on Use. City is authorized to use the Licensed Software only for City's internal purposes and only on the Designated CPU or the Designated Site specified in the Authorization Document. City agrees that it will, through its best efforts, not use or permit the

Appendix E

Licensed Software to be used in any manner, whether directly or indirectly, that would enable any other person or entity to use the Licensed Software on other than the Designated CPU or Site.

c. **Use on other than Designated CPU or Site.** A single back-up or replacement CPU may be used as a substitute for a Designated CPU at any time, provided that City provides Contractor with written notice of such hardware substitution, including information regarding the replacement hardware as required for the Designated CPU pursuant to this Agreement, that City refrain from using the Licensed Software simultaneously on both the Designated CPU and the substitute CPU, and that the Licensed Software be removed from or rendered inoperable on the Designated CPU by the City in a timely manner subsequent to installation of the Licensed Software upon the substitute CPU.

For the purpose of any bona fide City disaster recovery plan or with respect to the use of computer software in its municipal operations, City may make one copy of the Licensed Software for archival purposes and use such archival copy on a CPU other than the Designated CPU, or at a site other than the Designated Site, so long as such alternative CPU or site is owned or controlled by City. The use of such archival copy shall be limited to (1) the purpose of conducting limited testing of the disaster recovery plan's procedures and effectiveness and (2) during any period subsequent to the occurrence of an actual disaster during which the City cannot operate the Licensed Software on the Designated CPU or at the Designated Site. City agrees to furnish evidence of its disaster recovery plan and procedures upon Contractor's request.

d. **Transfer of Products.** City may move the Licensed Software and supporting materials to another City site which physically replaces the original installation site upon prior written notice to Contractor.

e. **Documentation.** Contractor shall provide City with the Licensed Software specified in the Authorization Document, and a minimum of two copies of the Documentation per installation. Contractor grants to City permission to duplicate all printed Documentation for City's internal use.

f. **Proprietary Markings.** City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Licensed Software or any related materials or Documentation.

g. **Authorized Modification.** City shall also be permitted to develop, use and modify Application Program Interfaces (API's), macros and user interfaces. For purposes of this Agreement, such development shall be deemed an authorized modification. Any such APIs, macros or other interfaces developed by the City shall become the property of the City.

6. Delivery

a. **Delivery.** One copy of each of the Licensed Software products in computer readable form shall be shipped to the City not later than **[insert date, or the date specified in Appendix A]**. Program storage media (magnetic tapes, disks and the like) and shipping shall be provided at no charge by Contractor.

b. **Installation.** Contractor shall install the programs by **[insert date]**.

c. **Risk of Loss.** If any of the Licensed Software products are lost or damaged during shipment or before installation is completed, Contractor shall promptly replace such products,

Appendix E

including the replacement of program storage media if necessary, at no additional charge to the City. If any of the Licensed Software products are lost or damaged while in the possession of the City, Contractor will promptly replace such products without charge, except for program storage media, unless supplied by the City.

7. Acceptance Testing. After Contractor has installed the Licensed Software, the City shall have a period of **[insert number]** days (“Acceptance Testing Period”) from the date of installation to verify that the Licensed software substantially performs to the specifications contained in the Documentation. In the event that the City determines that the Licensed Software does not meet such specifications, the City shall notify the Contractor in writing, and Contractor shall modify or correct the Licensed Software so that it satisfies the Acceptance criteria. The date of Acceptance will be that date upon which City provides Contractor with written notice of satisfactory completion of Acceptance testing. If City notifies Contractor after the Acceptance Testing Period that the Licensed Software does not meet the Acceptance criteria of this section, then City shall be entitled to terminate this License in accordance with the procedures specified in Section 30(b) herein, and shall be entitled to a full refund of the license fee.

8. Training. Contractor will provide up to **[insert number]** days of training in the use and operation of the Licensed Software at **[specify location for training, probably City’s or contractor’s premises]**. Upon request by the City, Contractor will provide additional training at its current best government rates.

9. Contractor’s Default. Failure or refusal of Contractor to perform or do any act herein required shall constitute a default. In the event of any default, in addition to any other remedy available to City, this Contract may be terminated by City upon ten days written notice. Such termination does not waive any other legal remedies available to City.

10. Maintenance and Support

a. **Maintenance and Support Services.** After Acceptance of the Licensed Software and subject to the terms, conditions, and charges set forth in this Section, Contractor will provide City with maintenance and support services for the Licensed Software as follows: (i) Contractor will provide such assistance as necessary to cause the Licensed Software to perform in accordance with the Specifications as set forth in the Documentation; (ii) Contractor will provide, for City’s use, whatever improvements, enhancements, extensions and other changes to the Licensed Software Contractor may develop, and (iii) Contractor will update the Licensed Software, as required, to cause it to operate under new versions or releases of the operating system specified in the Authorization Document so long as such updates are made generally available to Contractor’s other Licensees.

b. **Changes in Operating System.** If City desires to obtain a version of the Licensed Software that operates under an operating system not specified in the Authorization Document, Contractor will provide City with the appropriate version of the Licensed Software, if available, on a 90-day trial basis without additional charge, provided City has paid all maintenance and support charges then due. At the end of the 90-day trial period, City must elect one of the following three options: (i) City may retain and continue the old version of the Licensed Software, return the new version to Contractor and continue to pay the applicable rental or license fee and maintenance charges for the old version; (ii) City may retain and use the new version of the Licensed Software and return the old version to Contractor, provided City pays

Appendix E

Contractor the applicable rental or license fee and maintenance charges for the new version of the Licensed Software; or (iii) City may retain and use both versions of the Products, provided City pays Contractor the applicable rental or license fee and maintenance charges for both versions of the Licensed Software. City will promptly issue the necessary Authorization Document(s) to accomplish the above.

c. Charges

1) **Limited Term License.** When the license term specified in the Authorization Document is less than perpetual, all charges for maintenance and support are included in the periodic license or rental fee.

2) **Perpetual License.** Where the license term specified in the Authorization Document is perpetual, all charges for maintenance and support are as follows:

(a) **Periodic Payment License.** If the license fee specified in the Authorization Document is payable in periodic payments, there will be no additional charge for maintenance and support during the period for which such periodic payments are payable or the first year of the term, whichever is longer.

(b) **Lump Sum Payment Licenses.** If the license fee specified in the Authorization Document is payable in one lump sum, there will be no additional charge for the maintenance and support during the first year of the term.

d. **Charges for Subsequent Years.** For each year after the period for which periodic payments are payable, or each year after the first year of the lump sum payment license, as the case may be, Contractor will continue to provide City with the maintenance and support services as described in subsection A above, provided City issues a purchase order or modification to this License Agreement and pays Contractor in advance the annual maintenance and support charges then in effect. If there is an increase in annual maintenance and support charges, Contractor shall give City written notice of such increase at least thirty (30) days prior to the expiration of the applicable maintenance period. Annual maintenance and support charges shall not increase more than **[insert percentage]** % of the rate of the year immediately prior to such increase. Contractor will make maintenance and support services available to City for a minimum of **[insert number]** years.

11. Warranties: Right to Grant License. Contractor hereby warrants that it has title to and/or the authority to grant a license of the Licensed Software to the City.

12. Warranties: Conformity to Specifications. Contractor warrants that when the Licensed Software specified in the Authorization Document and all updates and improvements to the Licensed Software are delivered to City, they will be free from defects as to design, material, and workmanship and will perform on the Designated CPU in accordance with the Contractor's published specifications for the Licensed Software for a period of **[insert number]** days from City's Acceptance of such Licensed Software.

13. Infringement Indemnification. If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the Licensed Software infringes a patent, copyright, or any right of a third party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold City harmless and defend such action at its own expense. Contractor will pay the costs and damages

Appendix E

awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the Licensed Software constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement.

In the event a final injunction is obtained against City's use of the Licensed Software by reason of Infringement, or in Contractor's opinion City's use of the Licensed Software is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the Licensed Software as contemplated hereunder, (b) replace the Licensed Software with a non-infringing, functionally equivalent substitute Licensed Software, or (c) suitably modify the Licensed Software to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Licensed Software. If none of these options is reasonably available to Contractor, then the applicable Authorization Document or relevant part of such Authorization Document may be terminated at the option of either party hereto and Contractor shall refund to City all amounts paid under this Agreement for the license of such infringing Licensed Software. Any unauthorized modification or attempted modification of the Licensed Software by City or any failure by City to implement any improvements or updates to the Licensed Software, as supplied by Contractor, shall void this indemnity unless City has obtained prior written authorization from Contractor permitting such modification, attempted modification or failure to implement. Contractor shall have no liability for any claim of Infringement based on City's use or combination of the Licensed Software with products or data of the type for which the Licensed Software was neither designed nor intended to be used.

14. Payment. Compensation shall be due and payable within 45 days of the date of invoice. In no event shall the amount of this Agreement exceed **[give dollar amount in number and words – no pennies and no “.00”]**. The breakdown of costs associated with this Agreement is provided for in Appendix A. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until Licensed Software, **[insert “and services” if appropriate]** required under this Agreement are received from Contractor and approved by **[insert name of department]** as being in accordance with this Agreement.

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

15. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not

Appendix E

approved by a written amendment to the agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

16. Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique identifying number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

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

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

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

20. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor.

21. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any

Appendix E

of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees means that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to Contractor, its employees, City employees or third parties, or to property belonging to any of the above.

22. Independent Contractor; Payment of Taxes and Other Expenses

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

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

23. Insurance

Appendix E

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

➔ **The following types and amounts of insurance are those most commonly required in City contracts, but departments should tailor the types and amounts of insurance to the particular risks of each contractor's services. For example, if the contractor would deliver fuel, transport hazardous waste, or operate aircraft, higher policy limits would be necessary. Please contact the City's Risk Manager with specific questions, and do this early in the contracting process, such as before a bid or RFP is made public.**

Any reductions below these coverages require the approval of the City's Risk Manager.

It is important to avoid unnecessarily high insurance requirements, which could be a barrier to small businesses and LBEs doing business with the City.

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

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

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

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

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

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

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

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

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the

Appendix E

effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

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

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

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

j. (Reserved)

➔ **Do not insert subparagraph k. until after a waiver has been granted by the Risk Manager.**

k. Any of the terms of conditions of this Section 23 may be waived by the City's Risk Manager in writing, and attached to this Agreement as Appendix C. Such waiver is fully incorporated herein. The waiver shall waive only the requirements that are expressly identified and waived, and under such terms and conditions as stated in the waiver.

24. Indemnification and General Liability. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except where such loss, damage, injury, liability or claim is the result of active negligence or willful misconduct of City and in not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Appendix E

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

26. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 14 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.

27. Nondisclosure. City agrees that it shall treat the Licensed Software with the same degree of care as it treats like information of its own, which it does not wish to disclose to the public, from the date the Licensed Software is Accepted by the City until the license is terminated as provided herein. The obligations of the City set forth above, however, shall not apply to the Licensed Software, or any portion thereof, which:

- a. is now or hereafter becomes publicly known;
- b. is disclosed to the City by a third party which the City has no reason to believe is not legally entitled to disclose such information;
- c. is known to the City prior to its receipt of the Licensed Software;
- d. is subsequently developed by the City independently of any disclosures made hereunder by Contractor;
- e. is disclosed with Contractor's prior written consent;
- f. is disclosed by Contractor to a third party without similar restrictions.

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

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

Appendix E

Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

30. Termination

a. **Basis for Termination by Contractor.** Contractor shall have the right to terminate this Agreement if City is delinquent in making payments of any sum due under this Agreement and continues to be delinquent for a period of ninety days after the last day payment is due; provided, however, that written notice is given to City by Contractor of the expiration date of the ninety-day delinquency period at least ten days prior to the expiration date or, to terminate this Agreement if City commits any other breach of this Agreement and fails to remedy such breach within thirty days after receipt of written notice by Contractor of such breach.

b. **Basis for Termination by City.** City shall have the right, without further obligation or liability to Contractor (except as specified in Sections 29 (Protection of Private Information) and 30(c) (Disposition of Licensed Software on Termination) hereof): (i) to immediately terminate this Agreement or the applicable Authorization Document if Contractor commits any breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by City of such breach, in which event, Contractor shall reimburse City in the same manner as for the removal of the Licensed Software due to infringement under Section 13; or (ii) to terminate this Agreement or the applicable Authorization Document upon ninety (90) days prior written notice for any reason if the license granted hereunder is for any term other than perpetual. In the event the license granted is perpetual, termination of this Agreement or the applicable Authorization Document by City shall be effective upon receipt by Contractor of written notice of said termination.

c. **Disposition of Licensed Software on Termination.** Upon the expiration or termination of this Agreement or an applicable Authorization Document for any reason other than as provided for in Section 5(a) (Grant of License), City shall immediately: (i) return the Licensed Software to Contractor together with all Documentation; (ii) purge all copies of the Licensed Software or any portion thereof from all CPU's and from any computer storage medium or device on which City has placed or permitted others to place the Licensed Software; and (iii) give Contractor written certification that through its best efforts and to the best of its knowledge, City has complied with all of its obligations under Section 30(c).

d. **Survival.** This section and the following sections of this Agreement shall survive termination or expiration of this Agreement:

13. Infringement Indemnification.	27 Nondisclosure.
17 Submitting False Claims; Monetary Penalties.	28 Proprietary or Confidential Information of City
18 Taxes	29 Protection of Private Information.
19 Payment Does Not Imply Acceptance of Work.	39 Non-Waiver of Rights.
21 Responsibility for Equipment	40 Modification of Agreement
22 Independent Contractor; Payment of Taxes and Other Expenses	41 Administrative Remedy for Agreement Interpretation
23 Insurance	42 Agreement Made in California; Venue.
24 Indemnification and General Liability.	43 Construction

Appendix E

25	Incidental and Consequential Damages.	44	Entire Agreement
26	Liability of City.		

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

To City: **[name and title of department contact person]**
 [name of department]
 [mailing address]
 [e-mail address; fax number is optional]

To Contractor: **[name of contractor]**
 [mailing address]
 [e-mail address; fax number is optional]

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

32. Bankruptcy. In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect.

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

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

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

Appendix E

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

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

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

39. 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.

40. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

Appendix E

- 41. Administrative Remedy for Agreement Interpretation.** Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.
- 42. 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.
- 43. Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.
- 44. Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision.
- 45. Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws.
- 46. Graffiti Removal.** Reserved.
- 47. Food Service Waste Reduction Requirements.** Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.
- 48. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

Appendix E

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

CITY

Recommended by:

[name]
[title]
[department]

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
[name of Deputy City Attorney]
Deputy City Attorney

Approved:

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

CONTRACTOR

[company name]

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

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

[name of authorized representative]
[title]
[optional: address]
[optional: city, state, ZIP]

City vendor number: [vendor number]

Appendices

A: Services to be provided by Contractor

B: Calculation of Charges

➔ **If you obtained an insurance waiver from the Risk Manager, then list Appendix C here.**

C: Insurance Waiver

Appendix E

Appendix A Services to be provided by Contractor

Designated CPU(s):

or

Designated Site(s):

Other license restrictions:

City's Right to Access to Source Code:

Delivery:

Calculation of Charges:

Appendix E

Appendix C Insurance Waiver

➔ Use as appropriate and only if an insurance waiver has been granted by the Risk Manager.

Appendix F

**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**

Software Maintenance Attachment for Agreements between the City and County of San Francisco and

[insert name of contractor]

This Software Maintenance Attachment (“Attachment”) is appended to the **[insert name of Software License or Maintenance Agreement]** between the City and County of San Francisco (“City”) and **[insert name of contractor]** (“Contractor”), dated **[insert date]**. The terms and conditions of this Attachment are referenced in and incorporated into the **[insert name of Software License or Maintenance Agreement]** between City and Contractor. City and Contractor agree that the terms and conditions of this Attachment cover support and maintenance services to be provided by Contractor to City, for the computer programs and user manuals listed in Exhibit A to this Agreement.

1. Definitions. Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Attachment, it shall have the meaning herein set forth.

Effective Date Date upon which the Controller has certified to the availability of funds and the Contractor has been notified in writing or the Software is received and installed at the customer site, whichever is later.

Errors, Defects and Malfunctions Either a deviation between the function of the Software and the documentation furnished by Contractor for the Software, or a failure of the Software which degrades the use of the Software.

Fix Repair or replacement of source, object or executable code in the Software to remedy an Error, Defect or Malfunction.

Maintenance Agreement his Software Maintenance Attachment and **[list any other exhibits]** which together specify the terms and conditions for the correction of software Errors, Defects and Malfunctions in the Software, for the provision of Upgrades to the Software, and for the provision of Support Services to end users of the Software.

Appendix F

Patch	Temporary repair or replacement of code in the Software to remedy an Error, Defect or Malfunction. Patches may be made permanent and released in Subsequent Releases of the Software.
Priority Category	A priority assigned to an Error, Defect or Malfunction, designating the urgency of correcting an Error, Defect or Malfunction. Assignment of a Priority Category to an Error, Defect or Malfunction is based on City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.
Priority Protocol	Based on the Priority Category, rules specifying the turnaround time for correcting Errors, Malfunctions and Defects; escalation procedures, and personnel assignment.
Software	Licensed programs and associated documentation licensed to City by [insert name of Licensor] , as listed in Exhibit A [insert the following if upgrades will be required] and any modification or Upgrades or modifications to the program(s) provided under this Maintenance Agreement.
Subsequent Release	A release of the Software for use in a particular operating environment which supersedes the Software. A Subsequent Release is offered and expressly designated by Contractor as a replacement to a specified Software product. A Subsequent Release will be supported by Contractor in accordance with the terms of this Software Maintenance Attachment. Multiple Subsequent Releases may be supported by Contractor at any given time.
Support Services	The Software support service required under this Maintenance Agreement. Support Services include correcting an Error, Defect or Malfunction; providing telephone and/or online support concerning the installation and use of the Software; training in the installation and use of the Software; on-site consulting and application development services; detection, warning and correction of viruses; and disabled/disabling code.
Upgrade	Either an enhancement to the Software code to add new features or functions to the system or software programming revisions containing corrections to Errors, Defects and Malfunctions that have been reported by users or discovered by the Contractor.
Warranty Period	A period commencing with the installation of the Software product during which reported Errors, Defects and Malfunctions for Software products are corrected without charge in accordance with the provisions below.

Appendix F

Workaround A change in the procedures followed or end user operation of the software to avoid an Error, Defect or Malfunction without significantly impairing functionality or degrading the use of the Software.

Whenever the words “as directed,” “as required,” “as permitted,” or words of like effect are used, it shall be understood as the direction, requirement, or permission of the **[insert name of the department]**. The words “sufficient,” “necessary,” or “proper,” and the like, mean sufficient, necessary or proper in the judgment of the **[insert name of the department]**, unless otherwise indicated by the context.

2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Maintenance 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 City's Controller, and any amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Maintenance Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year in the event funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Maintenance Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

THIS SECTION SHALL CONTROL AGAINST ANY AND ALL OTHER PROVISIONS OF THIS MAINTENANCE AGREEMENT.

3. Term of the Maintenance Agreement. Subject to Section 2, the term of this Maintenance Agreement shall be from **[insert beginning date]** to **[insert termination date]**.

4. City's Payment Obligation. The City will make a good faith attempt to pay all invoices within 30 days of billing. However, in no event shall City be liable for interest or late charges for any late payments made after such 30 day period. Contractor and the City understand and intend that the obligations of the City to pay maintenance charges hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City. The City shall pay maintenance charges, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Maintenance Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City. In no event shall the amount of this Maintenance Agreement exceed **[insert whole dollar amount in numbers and words –no pennies and no “.00”]**. The breakdown of costs associated with this Maintenance Agreement appears in the agreement between City and Contractor, dated **[insert date]**, to which this Attachment is attached.

5. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of

Appendix F

the services, materials, equipment and supplies agreed upon in the contract unless the Maintenance Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the Maintenance Agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

6. Payment; Invoice Format. Invoices furnished by Contractor under this Maintenance Agreement must be in a form acceptable to the Controller. Each invoice must contain a unique identifying number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties." City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Maintenance Agreement.

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

8. Taxes. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon this Maintenance Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor. If this Maintenance Agreement entitles Contractor to the possession, occupancy or use of City real property for private gain, then the following provisions apply:

a. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that this Maintenance Agreement may create a possessory interest subject to property taxation and Contractor, and any permitted successor or assign, may be subject to the payment of such taxes.

Appendix F

b. Contractor, on behalf or itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or other extension of this Maintenance Agreement may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Contractor shall report any assignment or other transfer of any interest in this Maintenance Agreement or any renewal or extension thereof to the County Assessor within sixty days after such assignment, transfer, renewal or extension.

c. 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 under applicable law with respect to possessory interests.

9. Scope of Service Coverage

a. Contractor shall provide Support Services **[and provide Upgrades]** during the term of this Maintenance Agreement for the Software.

b. During the term of this Maintenance Agreement, Contractor will furnish Error, Defect or Malfunction correction in accordance with the Priority Categories listed below, based on the City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.

1) Priority 1: An Error, Defect or Malfunction which renders the Software inoperative; or causes the Software to fail catastrophically.

2) Priority 2: An Error, Defect or Malfunction which substantially degrades the performance of the Software, but does not prohibit the City's use of the Software.

3) Priority 3: An Error, Defect or Malfunction which causes only a minor impact on the use of the Software.

c. Contractor will furnish Error, Defect or Malfunction correction in accordance with the following protocols:

1) Priority 1 Protocol: Within two hours, Contractor assigns a product technical specialist(s) to diagnose and correct the Error, Defect or Malfunction; thereafter, Contractor shall provide ongoing communication about the status of the correction; shall proceed to immediately provide a Fix, a Patch or a Workaround; and exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Subsequent Release. Contractor will escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error, Defect or Malfunction is corrected.

2) Priority 2 Protocol: Within four hours, Contractor assigns a product technical specialist(s) to diagnose the Error, Defect or Malfunction and to commence correction of the Error, Defect or Malfunction; to immediately provide a Workaround; to provide escalation procedures as reasonably determined by Contractor's staff; and to exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Software maintenance release.

3) Priority 3 Protocol: Contractor may include a Fix or Patch in the next Software major release.

10. Hotline Support. Contractor shall provide remote access hotline support to City to help City answer routine questions with respect to the use of the Software. Contractor also shall provide remote access hotline support to City to initiate resolution of Priority 1 and Priority 2

Appendix F

Errors, Defects and Malfunctions. Hotline support shall be made available by phone between the hours of 8 a.m. and 6 p.m. Pacific time Monday through Friday, except legal holidays. Hotline support shall be available by electronic bulletin board, electronic mail or other service 24-hours a day, seven-days a week. Responses to questions posted by electronic means will be made within the time frame established under Priority Protocols for an Error, Defect or Malfunction in a Software Product.

11. City Responsibilities Related to Support. City shall use reasonable efforts to make available to Contractor reasonable access to the equipment on which City experienced the Error, Defect or Malfunction, the Software Product and all relevant documentation and records. City shall also provide reasonable assistance to Contractor, including sample output and diagnostic information, in order to assist Contractor in providing Support Services. City shall be responsible for the interface between the Software and other software products installed on City equipment. Unless otherwise agreed in writing between City and Contractor, City is responsible for installing, managing and operating any Software delivered under this Maintenance Agreement.

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

13. Qualified Personnel. Work under this Maintenance Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall assign adequate personnel resources to provide the level of service within the response times specified in this Maintenance Agreement.

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

15. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Maintenance Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or

Appendix F

employee of Contractor providing same. Nothing in this Maintenance 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 Maintenance 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 Maintenance Agreement.

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

16. Insurance

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

> **The following types and amounts of insurance are those most commonly required in City contracts, but departments should tailor the types and amounts of insurance to the particular risks of each contractor's services. For example, if the contractor would deliver fuel, transport hazardous waste, or operate aircraft, higher policy limits would be necessary. Please contact the City's Risk Manager with specific questions, and do this early in the contracting process, such as before a bid or RFP is made public.**

Any reductions below these coverages require the approval of the City's Risk Manager.

It is important to avoid unnecessarily high insurance requirements, which could be a barrier to small businesses and LBEs doing business with the City.

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

Appendix F

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

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

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

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

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

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

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

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

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

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

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

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

Appendix F

j. (Reserved)

> **Do not insert subparagraph k. until after a waiver has been granted by the Risk Manager.**

k. Any of the terms of conditions of this Section 16 may be waived by the City's Risk Manager in writing, and attached to this Agreement as Appendix C. Such waiver is fully incorporated herein. The waiver shall waive only the requirements that are expressly identified and waived, and under such terms and conditions as stated in the waiver.

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

18. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS MAINTENANCE AGREEMENT SHALL BE LIMITED TO THE PAYMENT OBLIGATION PROVIDED FOR IN SECTION 4 OF THIS MAINTENANCE AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS MAINTENANCE 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 MAINTENANCE AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS MAINTENANCE AGREEMENT.

Appendix F

19. Default. Failure or refusal of Contractor to perform or do any act herein required shall constitute a default. In the event of any default, in addition to any other remedy available to the City, this Maintenance Agreement may be terminated by the City upon ten days' written notice. Such termination does not waive any other legal remedies available to the City.

20. Support Service Term and Termination for Convenience

a. **Commencement.** Support Services for the Software begin on the Effective Date for the Software.

b. **Termination for Cause.** In the event Contractor fails to perform any of its obligations under this Maintenance Agreement, this Maintenance Agreement may be terminated and all of Contractor's rights hereunder ended. Termination will be effective after ten days written notice to Contractor. In the event of such termination, Contractor will be paid for those services performed under this Maintenance Agreement to the satisfaction of the City, up to the date of termination. However, City may offset from any such amounts due Contractor any costs City has or will incur due to Contractor's non-performance. Any such offset by City will not constitute waiver of any other remedies City may have against Contractor for financial injury or otherwise.

c. **Termination for Convenience.** City shall have the option, in its sole discretion, to terminate this Maintenance Agreement, at any time during the term thereof, for City's convenience and without cause by giving Contractor thirty days written notice of such termination. In the event of such termination, Contractor will be paid for those services performed, pursuant to this Maintenance Agreement, to the satisfaction of the City up to the date of termination. In no event will City be liable for costs incurred by Contractor after receipt of notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on this Maintenance Agreement, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not authorized or reasonable under this section.

21. Rights and Duties Upon Termination or Expiration. This Section and the following Sections of the Maintenance Agreement shall survive termination or expiration of this Maintenance Agreement:

- | | |
|---|--|
| 7. Submitting False Claims; Monetary Penalties | 25. Audit and Inspection of Records. |
| 8. Taxes. | 26. Subcontracting. |
| 12. Payment Does Not Imply Acceptance of Work. | 27. Assignment. |
| 14. Responsibility for Equipment. | 34. Provisions Controlling. |
| 15. Independent Contractor; Payment of Taxes and Other Expenses | 35. Entire Agreement; Modifications |
| 16. Insurance | 37. Non-Waiver of Rights. |
| 17. Indemnification. | 38. Governing Law. |
| | 41. Protection of Private Information. |

Subject to the immediately preceding sentence, upon termination of this Maintenance Agreement prior to expiration of the term specified in Section 3, this Maintenance Agreement shall

Appendix F

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

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

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

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

To City: **[name and title of department contact person]**
 [name of department]
 [mailing address]
 [e-mail address; fax number is optional]

To Contractor: **[name of contractor]**
 [mailing address]
 [e-mail address; fax number is optional]

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

25. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Maintenance Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices,

Appendix F

materials, payrolls, records or personnel and other data related to all other matters covered by this Maintenance Agreement, whether funded in whole or in part under this Maintenance Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Maintenance 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 of this Maintenance Agreement shall have the same rights conferred upon City by this Section.

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

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

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

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

Appendix F

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

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

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

33. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulation of the City and of all state, and federal laws in any manner affecting the performance of this Maintenance 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.

34. Provisions Controlling. Contractor agrees that in the event of conflicting language between this "Software Maintenance Attachment" and Contractor's printed form, the provisions of this "Software Maintenance Attachment" shall take precedence.

35. Entire Agreement; Modifications. The Maintenance Agreement, together with the Appendices and/or Exhibits hereto, constitutes the entire Maintenance Agreement between the parties and this Maintenance Agreement may not be modified, nor may any of its terms be waived, except by written instrument executed and approved in the same manner as this Maintenance Attachment. All agreements between the parties are included herein and no promises or statements have been made by either party unless endorsed hereon in writing. No change or waiver of any provisions hereof shall be valid unless made in writing with the consent

Appendix F

of both parties and executed in the same manner as this Maintenance Agreement. Should the application of any provision of this Maintenance Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Maintenance Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable. Subject to the specific provisions of this Maintenance Agreement, this Maintenance Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

36. Force Majeure. Contractor shall not be liable for failure to maintain Software when such failures are due to causes beyond its reasonable control, such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities, and in such event Contractor shall perform as soon as such cause is removed.

37. Non-Waiver of Rights. The waiver by either party of any breach by either party of any term, covenant or conditions hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

38. Governing Law. This formation, interpretation and performance of this Maintenance 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 Maintenance Agreement shall be in San Francisco.

39. Construction. All section headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Maintenance Agreement.

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

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

42. Graffiti Removal. Reserved.

43. Food Service Waste Reduction Requirements. Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by

Appendix F

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

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

Appendix F

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

CITY

CONTRACTOR

Recommended by:

[company name]

[name]
[title]
[department]

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

Approved as to Form:

Dennis J. Herrera
City Attorney

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

By: _____
[name of Deputy City Attorney]
Deputy City Attorney

Approved:

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

[name of authorized representative]
[title]
[optional: address]
[optional: city, state, ZIP]

City vendor number: **[vendor number]**

Appendices

A: Services to be provided by Contractor

B: Calculation of Charges

> **If you obtained an insurance waiver from the Risk Manager, then list Appendix C here.**

C: **Insurance Waiver**

Appendix F

Appendix A

> List all computer programs and user manuals that will receive support services pursuant to this Maintenance Agreement in this Appendix.

Appendix B
Insurance Waiver

>Use as appropriate and only if an insurance waiver has been signed and granted by the Risk Manager.

CITY & COUNTY OF SAN FRANCISCO CONTRACT MONITORING DIVISION



CMD ATTACHMENT 2

Requirements for Architecture, Engineering, & Professional Services Contracts

FOR CONTRACTS \$50,000 AND OVER

PART I. GENERAL

1.01 SAN FRANCISCO ADMINISTRATIVE CODE CHAPTERS 12B AND 14B

- A. To be eligible for this contract award, prime proposers must agree to comply with the Local Business Enterprise (“LBE”) requirements sanctioned by San Francisco Administrative Code Chapter 12B, Section 12B.4 and Chapter 14B, and its implementing Rules and Regulations. Chapters 12B and 14B are administered and monitored by the San Francisco Contract Monitoring Division (“CMD”).
- B. Chapters 12B and 14B and their implementing Rules and Regulations are incorporated by reference herein as though fully set forth and provide that the failure of any proposer or consultant to comply in good faith with these requirements shall be deemed a material breach of contract. Copies of both Chapters 12B and 14B and their implementing Rules and Regulations are available on the CMD website at <http://www.sfgov.org/cmd>.
- C. Chapter 14B allows for a ten percent (10%) rating discount, referred to in this Attachment 2 as a "rating bonus," for CMD certified Small – or Micro LBE's. Subject to certain limitations and exceptions, CMD SBA-LBEs may be entitled to a two percent (2%) rating bonus. Joint Ventures with Small or Micro-LBE participation may be entitled to a five percent (5%), seven and a half percent (7.5%), or to 10 percent (10%) rating bonus. The Certification Application is available on the CMD website at <http://www.sfgov.org/cmd>.

For assistance with CMD Attachment 2, please contact the following number(s):

CMD Main Office (415) 581-2310 or LBE Certification Unit (415) 581-2319

For compliance and assistance with the Equal Benefits Program, please contact the CMD Main Office.



1.02 SUBMISSION OF CMD FORMS

- A. **Unless otherwise authorized** by CMD, the proposer must submit the following CMD forms in a separate sealed envelope marked “CMD Forms” with the proposal. Failure to complete or submit any of the CMD Forms may cause the proposal to be deemed non-responsive and ineligible for contract award.

Proposers are responsible for reviewing the specific instructions and requirements on each CMD form.

1. **Form 2A: CMD Contract Participation Form:** Identify LBE subconsultants, vendors, and lower tier subconsultants that the proposal relies on to meet LBE subconsultant participation goal. Check the appropriate box under Rating Bonus.
2. **Form 2B: CMD “Good Faith Outreach” Requirements Form:** Document solicitation of LBE participation. This form must be submitted for every solicitation that includes LBE subconsultant participation. Proposer shall meet the specified LBE subcontractor participation goal and shall complete and submit Form 2B in accordance with Form 2B instructions.

In accordance with Section 14B.8(B) of the Administrative Code ("Code"), if a proposer does not demonstrate in its proposal that proposer exceeds the established LBE subcontracting participation goal by at least 35%, such proposer must demonstrate adequate good faith efforts to meet the LBE subconsulting goal. Such proposer must complete and submit Form 2B as required by Form 2B instructions and must submit all good faith documentation as specified in Form 2B with its proposal. Failure to meet the LBE subconsulting participation goal and demonstrate/document adequate good faith efforts shall cause the proposal to be determined non-responsive and rejected.

If a proposer demonstrates in its proposal that it exceeds the established LBE subconsulting participation goal by 35% or more, such proposer is not required to conduct good faith outreach efforts or to submit evidence of good faith efforts. Such proposer shall complete and submit Form 2B as required by Form 2B instructions. **NOTE: A SMALL OR MICRO-LBE PRIME PROPOSER MAY COUNT ITS OWN CONTRACT WORK TOWARD THE 35% GOOD FAITH EFFORTS EXCEPTION.**

- *Example:* The LBE subconsulting goal is 10%. Good faith efforts requirements will be waived if the Proposer:
 - 1) Meets the 10% LBE subconsulting goal;
 - AND**
 - 2) Has total LBE participation that equals or exceeds 13.5% of the total proposal amount. The 13.5% represents the 10% LBE subconsulting goal plus 35% of that 10% subconsulting goal.

LBE subconsulting goal set for project	10.0%
35% of the 10% LBE subconsulting goal	3.5%
Total LBE participation must equal or exceed:	13.5%

3. **Form 3: CMD Non-Discrimination Affidavit:** Must be signed by Proposer under penalty of perjury.
4. **Form 4: CMD Joint Venture Form:** Submit ONLY if the Proposer is requesting a rating bonus based on LBE participation in a joint venture partnership.
5. **Form 5: CMD Employment Form:** List the key personnel and responsibilities of the Proposer, Joint Venture partners, and Subconsultants.



B. CMD Contract Performance Forms

Proposers are responsible for reviewing the instructions and requirements on each form. The following CMD forms are submitted with progress and final payment requests.

1. **Form 7: CMD Progress Payment Form:** Submit to Contract Awarding Authority and to CMD for each payment request. *Note:* Page 2; column "A" of the form, ALL firms must be continuously listed including lower tier subconsultants for each payment request.
2. **Form 9: CMD Payment Affidavit:** Submit within ten (10) working days to Contract Awarding Authority and CMD following receipt of each progress payment from the Contract Awarding Authority. This form must be submitted EVEN if there were no payments to subconsultants associated with the progress payment.
3. **Form 8: CMD Exit Report and Affidavit: Submit with final Form 7. A separate Form 8 must be** completed for each LBE Joint Venture partner and LBE subconsultant (including lower-tier LBEs).
4. **Form 10: CMD Contract Modification Form:** This form shall be completed by the Consultant when any (all) amendments, modifications, or supplemental change orders that cumulatively increase the original contract amount by more than 20%, and then for all subsequent modifications.

Failure to submit any CMD contract performance forms may result in sanctions under Section 14B.11.C including but not limited to withholding or delaying progress and final payments.

1.03 "GOOD FAITH OUTREACH" REQUIREMENTS

All proposers shall undertake adequate good faith outreach as set forth in Section 14B.8(D) of the Administrative Code to select subconsultants to meet the LBE subconsulting participation goal, unless a proposer qualifies for the good faith efforts exception set forth in Section 14B.8(B) for proposers that demonstrate in their proposals that they exceed the established LBE subconsulting participation goal by 35% or more. Please see example in Section 1.02A.2 above.

Under Section 14B.8(C) of the Code, proposals that do not meet the LBE subconsulting participation goal set will be rejected as non-responsive unless the CMD Director finds that the proposer diligently undertook adequate good faith efforts required by Chapter 14B and that the failure to meet the goal resulted from an excusable error.

A proposer must contact an LBE before listing that LBE as a subconsultant in the proposal. A proposal that fails to comply with this requirement will be rejected as non-responsive. Proposers are required to submit Form 2B and supporting documentation EVEN IF the LBE subconsulting goal has been met.

1.04 NON COMPLIANCE AND SANCTIONS

A. Non-Compliance with Chapter 14B

1. A complaint of non-compliance concerning LBE participation initiated by any party after contract award will be processed in accordance with Chapter 14B and its implementing rules and regulations.
 - a. If the CMD Director determines that there is cause to believe that a consultant has failed to comply with any of the requirements of the Chapter 14B, CMD Rules and Regulations, or



contract provisions pertaining to LBE participation, the CMD Director shall notify the contract awarding authority and attempt to resolve the non-compliance through conference and conciliation.

- b. If the non-compliance is not resolved through conference and conciliation, the CMD Director shall conduct an investigation and, where the Director so finds, issue a written Finding of Non-Compliance.
 - c. The Director's finding shall indicate whether the consultant acted in good faith or whether noncompliance was based on willful or bad faith noncompliance with the requirements of Chapter 14B, CMD Rules and Regulations, or contract provisions pertaining to LBE participation.
1. Where the Director finds that the consultant acted in good faith, after affording the consultant notice and an opportunity to be heard, the Director shall recommend that the contract awarding authority take appropriate action. Where the Director finds willful or bad faith noncompliance, the Director shall impose sanctions for each violation of the ordinance, CMD rules and regulations, or contract provisions pertaining to LBE participation, which may include:
 - i) reject all proposals;
 - ii) declare a proposal non-responsive;
 - iii) suspend a contract;
 - iv) withhold funds;
 - v) assess penalties;
 - vi) debarment;
 - vii) deny CMD certification;
 - viii) revoke CMD certification; or
 - ix) pursuant to 14B.7(H)(2), assess liquidated damages in an amount equal to the consultant's net profit on the contract, 10% of the total amount of the contract or \$1,000, whichever is greatest as determined by CMD.
 2. The Director's determination of non-compliance is subject to appeal pursuant to CMD Rules and Regulations.
 3. An appeal by a consultant to the City Administrator shall not stay the Director's findings.
 4. The CMD Director may require such reports, information and documentation from consultants, subconsultants, contract awarding authorities, and heads of departments, divisions, and offices of the City and County as are reasonably necessary to determine compliance with the requirements of Chapter 14B.
- B. Procedure for the collection of penalties is as follows:**
1. The CMD Director shall send a written notice to the Controller, the Mayor and to all contract awarding authorities or City and County department officials overseeing any contract with the proposer or consultant that a determination of bad faith non-compliance has been made and that all payments due the proposer or consultant shall be withheld.
 2. The CMD Director shall transmit a report to the Controller and other applicable City departments to ensure that the liquidated damages are paid to the City.

PART II. RATING BONUS

2.01 APPLICATION

- A. Eligibility for the LBE Rating bonus:** Certified Small or Micro-LBEs, including certified non-profit organizations, are eligible for an LBE rating bonus if the LBE is CMD certified in the type of work



that is called out by the Contract Awarding Authority. Under certain circumstances, SBA LBE's are eligible for an LBE rating bonus. A proposer that has a certification application pending, that has been denied certification, that has had its certification revoked or that is in the process of appealing an CMD denial or revocation at the date and time the proposal is due is not an LBE and is not eligible to receive the rating bonus even if the firm is later certified or ultimately prevails in its appeal.

B. **Application of the Rating bonus:** The following rating bonus shall apply at each stage of the selection process, i.e., qualifications, proposals, and interviews:

1. **Contracts with an Estimated Cost in Excess of \$10,000 and Less Than or Equal To 400,000.** A 10% rating bonus will apply to any proposal submitted by an CMD certified Small or Micro-LBE. Proposals submitted by SBA-LBEs are not eligible for a rating bonus.
 2. **Contracts with an Estimated Cost in Excess of \$400,000 and Less Than or Equal To \$10,000,000.** A 10% rating bonus will apply to any proposal submitted by an CMD certified Small or Micro-LBE ...Pursuant to Section 14B.7(E), a 2% rating bonus will be applied to any proposal from an SBA-LBE, except that the 2% rating bonus shall not be applied at any stage if it would adversely affect a Small or Micro-LBE proposer or a JV with LBE participation.
 3. **Contracts with an Estimated Cost In Excess of \$10,000,000 and Less Than or Equal To \$20,000,000.** A 2% rating bonus will apply to any proposal submitted by an SBA-LBE..
 4. **The rating bonus for a Joint Venture ("JV") with LBE participation that meets the requirements of Section 2.02 below is as follows for contracts with an estimated cost of in excess of \$10,000 and Less Than or Equal to \$10,000,000:**
 - a. 10% for each JV among Small and/or Micro LBE prime proposers.
 - b. 5% for each JV which includes at least 35% (but less than 40%) participation by Small and/or Micro-LBE prime proposers..
 - c. 7.5% for each JV that includes 40% or more in participation by Small and/or Micro-LBE prime proposers.
 - d. The rating bonus will be applied by adding 5%, 7.5%, or 10% (as applicable) to the score of each firm eligible for a bonus for purposes of determining the highest ranked firm. Pursuant to Chapter 14B.7(F), SBA-LBEs are not eligible for the rating bonus when joint venturing with a non LBE firm. However, if the SBA-LBE joint ventures with a Micro-LBE or a Small-LBE, the joint venture will be entitled to the joint venture rating bonus only to the extent of the Micro-LBE or Small-LBE participation described in Section 2.01B.4b. and c. above.
 5. A 10% rating bonus for CMD LBE certified non-profit agencies for contracts estimated in excess of \$10,000, but less than or equal to \$10,000,000.
- C. The Rating Bonus for Small or Micro-LBEs or JVs does not apply for contracts estimated by the Contract Awarding Authority to exceed \$10 million. The rating bonus for SBA-LBEs does not apply for contracts estimated by the Contract Awarding Authority to exceed \$20 million.

2.02 JOINT VENTURE/PRIME ASSOCIATION

- A. Each Small and/or Micro-LBE JV partner must be responsible for a clearly defined portion of the work to be performed. The rating bonus is applied only when the Small and/or Micro-LBE partner has sufficient skill, experience, and financial capacity to perform the portion of the work identified for the Small and/or Micro-LBE. This portion must be set forth in detail separately from the work to be performed by the non-LBE JV partner. The joint venture partners must be of the same discipline/each possess the license required by the RFP and the LBE partner(s) must be CMD LBE certified in that area in order to be eligible for the rating bonus. The joint venture partners must be jointly responsible for the overall project management, control, and compliance with 14B requirements.



1. The Small and/or Micro-LBE JV partner's work must be assigned a commercially significant dollar value of the prime work and use its own employees and equipment.
 2. Each member of the joint venture must perform a “commercially useful function” as that term is defined by Section 14B.2 of the Ordinance. A Small and/or Micro-LBE JV partner that relies on the resources and personnel of a non-LBE firm will not be deemed to perform a “commercially useful function.”
 3. The following actions are prohibited: i) the non-LBE JV partner performing work for the Small and/or Micro-LBE JV partner; ii) leasing of equipment or property by the Small and/or Micro-LBE JV partner from the non-LBE JV partner; and iii) the hiring of the non-LBE JV partner’s employees by the Small and/or Micro-LBE JV partner.
 4. The Small and/or Micro-LBE JV partner must share in the ownership, control, management and administrative responsibilities, risks, and profit of the JV in direct proportion to its stated level of JV participation.
 5. The Small and/or Micro-LBE JV partner must perform work that is commensurate with its experience.
 6. A JV must submit an executed JV agreement and management plan detailing each JV partner’s responsibilities and tasks.
 7. A JV must obtain a Federal ID number for that entity.
 8. A JV must obtain a tax registration certificate from the City Tax Collectors Office for that entity.
- B. A prime association or partnership is considered the same as a joint venture and must comply with all the JV requirements stated above.
- C. The proposal items to be performed by the Small and/or Micro-LBE JV partner must be identified separately and all work must be accounted for, including subconsulting work.
- D. The cost of the work to be performed by the Small and/or Micro-LBE JV partners is to be calculated as a percentage of the work to be performed by the joint venture partners. The joint venture should deduct the amount of work to be performed by subconsultants from its total contract amount. This percentage is used to determine whether or not the joint venture is eligible for a rating bonus.

EXAMPLE:

Step 1. Calculate total JV partner work:

Total Contract Work	=	100%
Percentage of Total Contract Work Performed by Subconsultants	-	40%
Percentage of Total Contract Work Performed by JV partners	=	60%

Step 2. Calculate Small and/or Micro-LBE JV partner work:

	A	B	C
Description of JV Partners’ Scopes of Work	JV Partners’ Work as a % of the total contract	% of Task by Non-LBE JV Partner	% of Task by Small and/or Micro-LBE JV Partner
TASK 1	5%	3%	2%
TASK 2	20%	11%	9%
TASK 3	25%	12.5%	12.5%
TASK 4	10%	6%	4%
TOTAL JV Partner %	60%	32.5%	27.5%



Step 3. Calculate Small and/or Micro-LBE JV partner work as a percentage of the total JV partner work for the rating bonus.

Total Small and/or Micro- LBE JV %	27.5%	÷	Total JV %	60%	=	45.8%
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The Small and/or Micro-LBE JV partner’s participation is 45.8%. The JV is therefore eligible for a 7.5% rating bonus.

PART III SUBCONSULTANT PARTICIPATION

3.01 SUBCONSULTANT PARTICIPATION GOAL

NOTE: FOR PURPOSES OF THE LBE SUBCONSULTING REQUIREMENTS, “LBE” REFERS TO SMALL AND MICRO-LBES ONLY, UNLESS THE RFP ALLOWS FOR SBA-LBE SUBCONSULTANTS TO COUNT TOWARDS THE LBE PARTICIPATION GOAL.

- A. All proposers shall achieve the LBE subconsultant participation goal and undertake adequate good faith outreach as set forth in Section 14B.8(D) of the Ordinance to select subconsultants to meet the LBE subconsultant participation goal unless the proposer meets the good faith outreach exception in Section 14B.8.(B). See example in Section 1.02A.2. The LBE subconsultant participation goal can only be met with CMD certified Small and Micro-LBES.

For a directory of certified LBEs, please go to:

<http://www.sfgsa.org/index.aspx?page=5368>

Proposals that do not meet the LBE subconsultant participation goal set under 14B.8(A) of the Ordinance will be rejected as non-responsive unless the CMD Director finds that the proposer diligently undertook good faith efforts required by the Ordinance and that the failure to meet the goal resulted from an excusable error.

- B. Proposers must identify on Form 2A the particular LBE subconsultants and lower tier subconsultants to be utilized in performing the contract, specifying for each the percentage of participation, the type of work to be performed and such information as the CMD reasonably shall require to determine the responsiveness of the proposal.

The proposer must contact LBE subconsultants prior to listing them. LBEs must be certified with CMD on the proposal due date to receive LBE subconsulting credit. Listing an LBE that is not certified at the date and time the proposal is due will result in the loss of credit for that LBE subconsultant and may result in a non-responsive proposal.

Additionally, subconsultants may be listed by more than one proposer.

- C. A subconsultant that has a certification application pending, that has been denied certification, that has had its certification revoked or that is in the process of appealing an CMD denial or revocation at the date and time the proposal is due is not an LBE and cannot be counted as an LBE for purposes of achieving LBE subconsultant participation goal even if the firm is later certified or ultimately prevails in its appeal.
- D. CMD may require the successful proposer to submit performance reports on actual LBE participation at 30%, 50%, 70%, and 90% completion to the Contracting Awarding Authority and CMD.
- E. Determination and calculation of LBE subconsultant participation:



1. The Small and/or Micro LBE subconsultant shall be listed to perform a specific task(s), which is described in the RFP or RFQ.
2. If the Small and/or Micro-LBE subconsultant forms a joint venture with a non-LBE subconsultant, the Small and/or Micro-LBE subconsultant joint venture partner will be credited only for its portion of the work, as follows:

EXAMPLE:

If the total subcontract amount = \$ 1,000,000 of which \$510,000 is the Small and/or Micro-LBE JV subcontract amount and \$490,000 is the non-LBE subcontract amount, then \$510,000 is credited toward the LBE subconsultant participation goal.

3. All work done by lower-tier Small and/or Micro-LBE subconsultants will be credited toward meeting the goal.

EXAMPLE:

If the total subcontract amount = \$1,000,000, of which \$200,000 is the lower-tier Small and/or Micro-LBE subconsultant's portion, then \$200,000 is credited toward the LBE subconsultant participation goal.

4. If a Proposer owns or controls more than one business that is CMD certified as an Small and/or Micro-LBE, the proposer will not receive credit if it lists its other firms to meet the LBE subconsultant participation goal when submitting as a prime. In determining ownership of a business, a business owned by proposer's spouse or domestic partner shall be deemed to be owned by the proposer.
5. It is the responsibility of the proposer to verify the subconsultant's LBE certification status.
6. A Small and/or Micro-LBE subconsultant must be certified in the type of work that the Proposer lists the firm for on CMD Form 2A.
7. The Small and/or Micro-LBE subconsultant must be utilized on the contract to perform a commercially useful function. No credit will be given for a LBE that serves as a pass-through.
8. A Small and/or Micro-LBE Prime proposer must meet the LBE subconsultant participation goal. A Small and/or Micro LBE Prime proposer may not count its participation towards meeting the LBE subconsultant participation goal.
9. A Small and/or Micro-LBE Prime proposer may count its participation towards meeting the good faith outreach exception set forth in 14B.8(B).

F. Substitution, removal, or contract modification of LBE:

No LBE subconsultant listed on Form 2A shall be substituted, removed from the contract or have its contract, purchase order or other form of agreement modified in any way without prior CMD approval. Additionally, no new subconsultants shall be added without prior CMD approval.



PART IV NON-DISCRIMINATION REQUIREMENTS

4.01 GENERAL

As a condition of contract award, Consultants and subconsultants shall comply with the nondiscrimination in employment provisions required by Chapter 12B of the Administrative Code.

4.02 NONDISCRIMINATION PROVISIONS

- A. Prior to the award of the contract, the consultant must agree that it does and will not, during the time of the contract or any contract amendment, discriminate in the provision of benefits between its employees with spouses and employees with domestic partners.
- B. The consultant and subconsultants on this contract will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status, weight, height, or association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Discrimination on the basis of sex includes sexual harassment as defined in Section 16.9-25(b) of this Code. The Consultant, Contractor or Subconsultant/Subcontractor will take action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to the fact or perception of their race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or AIDS/HIV status. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.
- C. **Non-Compliance with Chapter 12B Prior to Contract Award**

The consultant and any subconsultants must be in compliance with the nondiscrimination provisions of Chapter 12B, on all existing City contracts prior to award of this contract.

Prior to the award of any City contract, the CMD has the authority to review the consultant's and subconsultant's prior performance to ensure compliance with the nondiscrimination provisions of Chapter 12B.

If the CMD determines that there is cause to believe that a consultant or subconsultant is not in compliance with the nondiscrimination provisions of Chapter 12B, the CMD shall notify the contract awarding authority and attempt to resolve the non-compliance through conciliation.

- 1. If the non-compliance cannot be resolved, the CMD shall submit to the consultant or subconsultant and the contract awarding authority a written Finding of Non-compliance.
- 2. The CMD shall give the consultant or subconsultant an opportunity to appeal the Finding.
- 3. The CMD may stay the award of any contract to a consultant where the consultant or any subconsultant is the subject of an investigation by written notice to the contract-awarding agency.

D. Complaints of Discrimination after Contract Award

- 1. A complaint of discrimination in employment initiated by any party after contract award shall be processed in accordance with the CMD Rules of Procedure, adopted pursuant to Chapter 12B of the San Francisco Administrative Code.
- 2. A finding of discrimination may result in imposition of appropriate sanctions, including:
 - a. There may be deducted from the amount payable to the consultant or subconsultant under this contract a penalty of \$50 for each person for each calendar day the person was discriminated against in violation of the provisions of the contract.



- b. The contract may be canceled, terminated or suspended in part by the contract awarding authority.
- c. The consultant, subconsultant or vendor may be determined ineligible to perform work or supply products on any City contract for a period not to exceed two years.



FORM 2A: CMD CONTRACT PARTICIPATION FORM

Section 1: This form must be submitted with the proposal or the proposal may be deemed non-responsive and rejected. Prime Proposer, each Joint Venture Partner, Subconsultants, Vendors, and lower sub tiers must be listed on this form. Only CMD certified Small and/or Micro-LBEs can be used to meet the LBE subconsultant participation goal unless the RFP allows for SBA-LBE subconsultants to count towards the LBE participation goal. A Small and/or Micro- LBE Prime proposer/JV with LBE participation must meet the LBE subconsultant goal. A Small and/or Micro-LBE Prime proposer/JV with LBE participation may not count its participation towards meeting the LBE subconsultant participation goal. Be sure to check box for Rating Bonus. If more space is needed, attach additional copies of this form. This form is also completed and submitted for all contract modifications which exceed the original contract amount by more than 20%.

Contract:	RATING BONUS	
	<input type="checkbox"/> LBE 10%	<input type="checkbox"/> Joint Venture 7.5%
Firm:	<input type="checkbox"/> Joint Venture 5%	<input type="checkbox"/> Joint Venture 10% (LBEs ONLY)
Contact Person:	<input type="checkbox"/> No Rating Bonus Requested	
Address:	LBE Goal %	
City/ZIP		
Phone		

*Type: Identify if prime (P), JV partner (J), Subconsultant (S), or Vendor (V)

TYPE *	Firm	PORTION OF WORK (describe scope(s) of work)	% OF WORK	INDICATE LBE YES/NO	If an LBE, Identify MBE, WBE, or OBE **	% OF LBE SUBWORK
			%			%
			%			%
			%			%
			%			%
Total % of Work: 100%				Total LBE Subconsulting%		%

I declare, under penalty of perjury under the laws of the State of California, that I am utilizing the above Consultants for the portions of work and amounts as reflected in the Proposal for this Contract.

Owner/Authorized Representative (Signature): _____ **Date:** _____

Print Name and Title: _____

** MBE = Minority Business Enterprise, WBE = Women Business Enterprise, OBE = Other Business Enterprise. See CMD website <http://sfgov.org/cmd> for each firm's status.



Section 2. Prime Proposer, Joint Venture Partners, Subconsultant, and Vendor Information

Provide information for each firm listed in Section 1 of this form. Firms which have previously worked on City contracts may already have a vendor number. Vendor numbers of LBE firms are located in the CMD LBE website at <http://sfgov.org/cmd>. Use additional sheets if necessary.

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____



FORM 2B: “GOOD FAITH OUTREACH” REQUIREMENTS FORM

This “Good Faith Outreach” form, along with the required supporting documentation must be completed and submitted per the instructions in this form **EVEN IF** the LBE subconsulting participation goal has been met (*Section 14B.8 of the San Francisco Administrative Code*). *Proposers* may obtain a list of certified LBEs from the CMD website: <http://www.sfgsa.org/index.aspx?page=5368/>

SECTION A

Under Section 14B.8(B) of the Administrative Code, the good faith outreach exception states that if a proposer demonstrates total LBE participation that exceeds by 35% the established LBE subconsultant participation goal for the project, the proposer is not required to conduct good faith outreach efforts or to submit evidence of good faith outreach efforts. Note that a Small or Micro-LBE prime proposer may count its own Contract Work toward the 35% good faith outreach exception. Please see example in CMD Attachment 2, Section 1.02A.2.

Does your proposal demonstrate that you have exceeded the established LBE subconsultant participation goal by 35% or more in accordance with Section 14B.8(B)? YES* NO

If the answer is yes, please check "YES", above, and complete Section C (if applicable) and Section D of this Form. If the answer is no, please check "NO", above, and complete Sections B and D of this Form, and submit all required supporting documentation in accordance with the instructions in Section B.

* Note: An answer of "YES", above, is subject to verification by CMD. If the CMD determines that proposer did not exceed the LBE subconsultant participation goal by at least 35% and proposer either failed to undertake adequate good faith outreach efforts or failed to submit supporting documentation with its proposal as required by Section B, items 2 and 4, below, then proposer’s proposal shall be declared non-responsive and **AND INELIGIBLE FOR CONTRACT AWARD.**

NOTE: “LBE” REFERS TO SMALL AND MICRO-LBES ONLY, UNLESS THE RFP ALLOWS FOR SBA-LBE SUBCONSULTANTS TO COUNT TOWARDS THE LBE PARTICIPATION GOAL.

SECTION B

All proposers that do not qualify for the good faith outreach exception set forth in Section 14B.8(B) of the Administrative Code must complete this Section B and submit supporting documentation as required.

A proposer must achieve at least 80 points, as determined by CMD, to be deemed compliant with the “good faith outreach” requirements. A proposer who fails to achieve at least 80 points will be declared non-responsive, and the proposal will be rejected. Please check yes or no for each item listed below.

1. Did your firm attend the pre-proposal meeting scheduled by the City to inform all proposers of the LBE program requirements for this project? If the City does not hold a pre-proposal meeting, all proposers will receive 15 points.	<input type="checkbox"/> Yes (15 Points)	<input type="checkbox"/> No (0 Points)
2. Did your firm advertise, not less than 10 calendar days before the due date of the proposal, in one or more daily or weekly newspapers, trade association publications, LBE trade oriented publications, trade journals, or other media, such as: Small Business Exchange, or the Bid and Contracts Section of the Office of Contract Administration’s website (http://mission.sfgov.org/OCABidPublication/)? If so, <u>please enclose a copy of the advertisement.</u> <i>The advertisement must provide LBEs with adequate information about the project.</i> If the City gave public notice of the project less than 15 calendar days prior to the proposal due date, no advertisement is required, and all proposers will receive 10 points.	<input type="checkbox"/> Yes (10 points)	<input type="checkbox"/> No (0 Points)



<p>3. Did your firm identify and select work types (as categorized in CMD’s LBE Directory) to meet the LBE subconsultant participation goal? If so, please identify the work types below:</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p><input type="checkbox"/> Yes (10 points)</p>	<p><input type="checkbox"/> No (0 Points)</p>
<p>4. Did your firm contact LBE firms (LBE firms include MBEs, WBEs and OBEs) for the identified work types (see #3 above), not less than 10 calendar days prior to the due date of the proposal? If so, <u>please include documentation (i.e. phone logs, emails, faxes, etc.) to verify that contacts were made.</u> The purpose of contacting LBE firms is to provide notice of interest in proposing for this project.</p> <p>A proposer who contacts those LBE firms certified in the identified work types, not less than 10 calendar days prior to due date of the proposal, will receive up to 45 points. If a proposer does not comply with paragraphs a. & b. below, one point will be deducted for each LBE firm within each identified work type that is not contacted.</p> <p>a. If there are less than 25 firms within an identified work type, a proposer should contact all of them.</p> <p>b. If there are 25 or more firms within an identified work type, a proposer should notify at least 25 firms within such identified work type.</p> <p>If a proposer does not contact any LBE firms, the proposer will receive no points. When contacting LBEs, you should provide adequate information about the project. If the City gave public notice of the project less than 15 calendar days prior to the proposal due date, the allocation of points above still applies, except that the proposer may contact those LBE firms certified in the identified work types less than 10 calendar days prior to the due date of the proposal.</p>	<p><input type="checkbox"/> Yes (Up to 45 points)</p>	<p><input type="checkbox"/> No (0 Points)</p>
<p>5. Did your firm follow-up and negotiate in good faith with interested LBEs? If so, <u>please include documentation (i.e. phone logs, emails, faxes, etc.) to verify that follow-up contacts were made.</u> If applicable, your follow-up contact with interested LBEs should provide information on the City’s bonding and financial assistance programs.</p> <p>For each interested LBE firm that the proposer does not follow-up with, a point will be deducted.</p> <p>A proposer who does not perform any follow-up contact with interested LBEs will receive no points.</p> <p>**Interested LBE** shall mean an LBE firm that expresses interest in being a subconsultant to the proposer.</p>	<p><input type="checkbox"/> Yes (Up to 20 points)</p>	<p><input type="checkbox"/> No (0 Points)</p>
<p>6. A proposer shall submit the following documentation with this form:</p> <ol style="list-style-type: none"> (1) Copies of all written proposals submitted, including those from non-LBEs; (2) If oral proposals were received, a list of all such proposals, including those from non-LBEs. The work type and dollar amounts for each such proposal must be specified; and (3) A full and complete statement of the reasons for selection of the subconsultants for each work type. If the reason is based on relative qualifications, the statement must address the particular qualification at issue. 		



SECTION C

If a Small or Micro-LBE prime proposer checks "YES" in Section A, above, and is relying on self-performed Contract Work to meet the 35% good faith efforts outreach exception, such Small or Micro-LBE prime proposer must indicate the total value of Contract Work that proposer will perform with its own forces in the space below:

 % of work

SECTION D

Contract Name: _____

Contract No.: _____

Signature of Owner/Authorized Representative: _____

Owner/Authorized Representative (Print): _____

Name of Firm (Print): _____

Title and Position: _____

Address, City, ZIP: _____

E-mail: _____

Date: _____



FORM 3: CMD NON-DISCRIMINATION AFFIDAVIT

1. I will ensure that my firm complies fully with the provisions of Chapter 14B of the San Francisco Administrative Code and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
2. Upon request, I will provide the CMD with copies of contracts, subcontract agreements, certified payroll records and other documents requested so the CMD may investigate claims of discrimination or non-compliance with either Chapter 12B or Chapter 14B.
3. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the Contract Monitoring Division shall be payable to the City and County of San Francisco upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any contract with the City and County of San Francisco.
4. I declare and swear under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

Signature of Owner/Authorized Representative: _____

Owner/Authorized Representative (Print) _____

Name of Firm (Print) _____

Title and Position _____

Address, City, ZIP _____

Federal Employer Identification Number (FEIN): _____

Date: _____



FORM 4: CMD JOINT VENTURE FORM

This form must be submitted ONLY if the proposer is requesting a Joint Venture partnership with an Small and/or Micro-LBE firm for the rating bonus. The Joint Venture partners must submit a joint venture agreement and management plan with the proposal. All work must be accounted for including subconsulting work.

SECTION 1: GENERAL INFORMATION

1. Name of Contract or Project:

2. Name of all JV partners: (Check LBE if applicable)

	LBE <input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>

3. Attach a copy of Joint Venture Agreement and Management plans.

4. The management plan must include the following information:

- a. Describe in detail how decisions will be made for work distribution and compliance of Small and/or Micro-LBE Joint Venture participation.
- b. Provide each Joint Venture partner’s specific duties and responsibilities (include organizational chart)
- c. Identify the Location of Joint Venture Office.
- d. Provide in detail how decision will be made for work distribution to Small and /or Micro-LBE subconsultants and/or vendors.
- e. Submit copies of bank signature cards with authorized names, titles, and address/city of the bank (required after award of contract.)

5. Calculation of the Rating Bonus. See §2.02D of CMD Attachment 2 for an example.

If the joint venture partners are dividing the work according to a different formula than that described below, please contact CMD staff and describe the arrangement in detail prior to submittal of proposal.

Joint venture partners are encouraged to meet with CMD regarding their joint venture prior to submitting their proposal.

The rating bonus is awarded based on the Small and/or Micro-LBE JV partner tasks calculated as a percentage of the total JV partner tasks.

Step 1. Calculate total JV partner tasks.

Total Contract Tasks	=	100%
Percentage of Total Work to be Performed by Subconsultants	-	%
Percentage of JV partner tasks	=	%



Step 2. Calculate Small and/or Micro-LBE JV partner tasks:

	A	B	C
Description of JV partner Scopes of Work (Specific details of work)	JV Partners' Work as a % of the total project	% of Task by Non-LBE JV Partner	% of Task by Small and/or Micro-LBE JV Partner
	%	%	%
	%	%	%
	%	%	%
	%	%	%
	%	%	%
TOTAL JV %	%	%	%

Step 3. Calculate Small and/or Micro-LBE JV partner work as a percentage of the total JV partner work for the rating bonus.

Total Small and/or Micro-LBE JV Partner %		÷	Total JV %		=	%
---	--	---	------------	--	---	---

JOINT VENTURE PARTNERS MUST SIGN THIS FORM

Owner/Authorized Representative (Signature)	Owner/Authorized Representative (Signature)
Name and Title (Print)	Name and Title (Print)
Firm Name	Firm Name
Telephone Date	Telephone Date



FORM 5: CMD EMPLOYMENT FORM

This form is to be submitted with the proposal.

1. Indicate key personnel designated to work on this project for the entire project team (prime proposer, joint venture partners, subconsultants, and vendors).

The employees listed should include all those listed in other sections of the proposal.

NAME OF FIRM	NAME OF EMPLOYEE	PROJECT ROLE	RACE	SEX

Sign below including each joint venture partner.

 Owner/Authorized Representative (Signature)

 Owner/Authorized Representative (Signature)

 Name and Title (Print)

 Name and Title (Print)

 Firm Name

 Firm Name

 Telephone

 Date

 Telephone

 Date



FORM 7: CMD PROGRESS PAYMENT FORM

To be completed by Consultant and submitted to the Contract Awarding Authority and CMD with its monthly progress payment application (transmit to the following):

TRANSMITTAL

TO: Project Manager/Designee COPY TO: CMD Contract Compliance Officer
 Firm: _____ Date: _____

SECTION 1. Fill in all the blanks

Contract Number: _____ Contract Name: _____
 Reporting Period From: _____ To: _____ Progress Payment No: _____

The information submitted on Sections 1 and 2 of this form must be cumulative for the entire contract as opposed to individual task orders. Additionally, the information submitted on Sections 1 and 2 of this form must be consistent. See next page for Section 2.

1. Original Contract Award Amount:	\$ _____
2. Amount of Amendments and Modifications to Date:	\$ _____
3. Total Contract to Date including Amendments and Modifications (Line 1 + Line 2):	\$ _____
4. Sub-total Amount Invoiced this submittal period: Professional Fees	\$ _____
5. Sub-total Amount Invoiced this submittal period: Reimbursable Expenses	\$ _____
6. Gross Amount Invoiced this submittal period (Line 4 + Line 5):	\$ _____
7. All Previous Gross Amounts Invoiced:	\$ _____
8. Total Gross Amounts of Progress Payments Invoiced to Date (Line 6 + Line 7):	\$ _____
9. Percent Completed (Line 8 ÷ Line 3):	_____ %

Consultant, including each joint venture partner, must sign this form.

_____ Owner/Authorized Representative (Signature) _____ Name (Print) _____ Title (Print) _____ Firm Name _____ Telephone Fax _____ Date	_____ Owner/Authorized Representative (Signature) _____ Name (Print) _____ Title (Print) _____ Firm Name _____ Telephone Fax _____ Date
---	---



FORM 9: CMD PAYMENT AFFIDAVIT

Consultant or Joint Venture partners must submit this form to the Contract Awarding Authority and CMD within ten (10) working days following receipt of each progress payment from the Contract Awarding Authority. This form must be submitted EVEN if there is no sub payment of this reporting period and until completion of the contract.

TO: Project Manager/Designee

COPY TO: CMD Contract Compliance Officer

Firm: _____

Date: _____

List the following information for each progress payment received from the Contract Awarding Authority. Use additional sheets to include complete payment information for all subconsultants and vendors (including lower tiers utilized on this Contract. Failure to submit all required information may lead to partial withholding of progress payment.

Contract Number: _____ Contract Name: _____

Contract Awarding Department: _____

Progress Payment No.: _____ Period Ending: _____

Amount Received: \$ _____ Date: _____ Warrant/Check No.: _____

Check box and sign below if there is no sub payment for this reporting period.

Subconsultant/Vendor Name	Business Address	Amount Paid	Payment Date	Check Number
		\$		
		\$		
		\$		
		\$		
		\$		
		\$		

I/We declare, under penalty of perjury under the laws of the State of California that the above information is complete, that the tabulated amounts paid to date are accurate and correct.

Prime consultant, including each joint venture partner, must sign this form (use additional sheets if necessary)

 Owner/Authorized Representative (Signature)

 Name (Print) Title

 Firm Name

 Telephone Date

 Owner/Authorized Representative (Signature)

 Name (Print) Title

 Firm Name

 Telephone Date



FORM 8: CMD EXIT REPORT AND AFFIDAVIT

Prime Consultant must complete and sign this form (Sections 1 and 4) for each LBE subconsultant (incl. lower tier LBEs). **All** LBEs must complete and sign Sections 2 and 3 of this form. These forms should be submitted to the Contract Awarding Authority with the final progress payment request.

TRANSMITTAL

TO: Project Manager/Designee COPY: CMD Contract Compliance Officer
 FROM (Consultant): _____ Date Transmitted: _____

SECTION 1. Please check this box if there are no LBE subconsultants for this contract:

Reporting Date: _____ Contract Name: _____
 Name of LBE: _____ Portion of Work (Trade): _____
 Original LBE Contract Amount: \$ _____
 Change Orders, Amendments, Modifications \$ _____
 Final LBE Contract Amount: \$ _____
 Amount of Progress Payments Paid to Date: \$ _____
 Amount Owning including all Change Orders, Amendments and Modifications \$ _____

Explanation by Consultant if the final contract amount for this LBE is less than the original contract amount:

SECTION 2. Please check one:

- I did NOT subcontract out ANY portion of our work to another subcontractor.
- I DID subcontract out our work to:

Name of Firm: _____ Amount Subcontracted: \$ _____
 Name of Firm: _____ Amount Subcontracted: \$ _____

SECTION 3.

To be signed by the LBE Subconsultant or vendor:

- I agree I disagree

Explanation by LBE if it is in disagreement with the above explanation, or with the information on this form. LBE must complete this section within 5 business days after it has received it from the Prime. It is the LBE's responsibility to address any discrepancies within 5 business days concerning the final amount owed. If the LBE fails to submit the form within 5 business days, the Prime will note this on the form and submit the form as is with the final progress payment:

Owner/Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone

Date



SECTION 4.

If this form is submitted without the LBE's signature, the Prime must enclose verification of delivery of this form to the subconsultant.

I declare, under penalty of perjury under the laws of the State of California, that the information contained in Section 1 of this form is complete, that the tabulated amounts paid to date are accurate and correct, and that the tabulated amounts owing will be paid within three (3) days after receipt of the City's final payment under the Contract.

Owner/Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone

Date



FORM 10: CMD CONTRACT MODIFICATION FORM

Consultant must submit this form with the required supporting documentation when processing amendments, modifications or change orders that cumulatively increase the original contract amount by more than 20%, and then for all subsequent amendments, modifications or change orders. This form must be completed prior to the approval of such amendments, modifications or change orders. (This provision applies only to contracts originally valued at \$50,000 or more).

Name of Project/Contract Title: _____

Original Contract Amount: _____

Contract Amount as Modified to Date: _____

Amount of Current Modification Request: _____

REQUIRED ATTACHMENTS:

1. Revised Form 2A reflecting the new overall contract amounts for the prime consultant, joint venture partners, subconsultants, and vendors.
2. A list of all prior contract amendments, modifications, supplements and/or change orders leading up to this modification, including those leading up to the amendment which increased the original contract amount by more than 20%.
3. A spreadsheet showing each firm's participation for the overall contract, including each firm's participation to date and proposed participation under the modification.
4. A brief description of the work to be performed under this amendment, modification, or change order.



Owner/Authorized Representative (Signature) _____

Name (Print) _____ Title _____

Firm Name _____

Telephone _____ Date _____

Owner/Authorized Representative (Signature) _____

Name (Print) _____ Title _____

Firm Name _____

Telephone _____ Date _____

Insurance Requirements

Contractor/Vendor:

The City and County of San Francisco would like to direct your attention to the City's insurance requirements, which have proved confusing to some bidders in the past.

We have enclosed a sample of the Certificate of Insurance and Additional Insured Endorsements. These are standard insurance industry forms, and your broker should be aware of them. The successful bidder must submit the Certificate of Insurance and Additional Insured Endorsements with the required insurance coverages prior to receiving an order/contract agreement.

Please review these forms and the insurance portion of the bid document with your insurance broker for assurance that the mandatory types and limits of insurance coverages are available or already in place. If you are the successful bidder, you must provide evidence of insurance within an allotted time. If you fail to provide the Certificate of Insurance and Additional Insured Endorsements, your bid may be disqualified.

Please note that the attached Certificate reflects the standard types and limits of insurance the City requires **most often**, the requirements of each proposal **may differ**, in which case the proposal's specific requirements shall prevail. Please be certain you and your insurance broker review the insurance requirements of the proposal carefully.

If you and/or your broker have any questions concerning our insurance requirements, please call the contact person in charge of this bid/RFP.

NOTE: Additional Insured Endorsement must be issued by the insurance carrier.

CERTIFICATE OF INSURANCE	ISSUE DATE:
---------------------------------	-------------

PRODUCER:	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER OTHER COVERAGE AFFORDED BY THE POLICIES BELOW.								
COMPANIES AFFORDING COVERAGE									
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 20%; padding: 2px;">COMPANY LETTER A</td> <td style="width: 80%;"></td> </tr> <tr> <td style="padding: 2px;">COMPANY LETTER B</td> <td></td> </tr> <tr> <td style="padding: 2px;">COMPANY LETTER C</td> <td></td> </tr> <tr> <td style="padding: 2px;">COMPANY LETTER D</td> <td></td> </tr> </table>	COMPANY LETTER A		COMPANY LETTER B		COMPANY LETTER C		COMPANY LETTER D	
COMPANY LETTER A									
COMPANY LETTER B									
COMPANY LETTER C									
COMPANY LETTER D									
INSURED:									

COVERAGES AND LIMITS

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO. LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF. DATE	POLICY EXP. DATE	DESCRIPTION	LIMITS
	GENERAL LIABILITY <input checked="" type="checkbox"/> COMM. GENERAL LIAB. <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCURRENCE <input type="checkbox"/> OWNER'S & CONTRACT'S PROT <input type="checkbox"/> _____				GENERAL AGGREGATE PROD-COMP/OP AGG. PERS & ADV. INJURY EACH OCCURRENCE FIRE DAMAGE (One Fire) MEDICAL EXPENSE (One Per)	\$2 million \$1 million \$1 million \$1 million
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> _____				COMBINED SINGLE LIMIT BODILY INJURY (Per Person) BODILY INJURY (Per Accident) PROPERTY DAMAGE	\$1 million
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE AGGREGATE	
	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY				<input checked="" type="checkbox"/> STATUTORY LIMITS EACH ACCIDENT DISEASE - POLICY LIMIT DISEASE - EACH EMPLOYEE	\$1 million \$1 million \$1 million
	OTHER INSURANCE					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS:

- (1) Additional Insureds: City and County of San Francisco, its officers, employees and agents. (Endorsement required)
- (2) Liability insurance is primary and applies separately to each insured, except with respect to limits of liability. (Endorsement required)
- (3) Endorsement must be attached with the Certificate.

NAME AND ADDRESS OF CERTIFICATE HOLDER: City and County of San Francisco Department Name Attn: Address City, State, Zip Code	CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. (See contract requirements for any changes to this Section.)
	AUTHORIZED REPRESENTATIVE: (Signature required)

POLICY NUMBER:

**COMMERCIAL GENERAL LIABILITY
ISSUE DATE:**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED-DESIGNATED PERSON
OR ORGANIZATION**

**This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART**

SCHEDULE

Name of person or organization:

**ANY PERSON OR ENTITY WITH WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT,
EXECUTED PRIOR TO LOSS TO NAME AS AN ADDITIONAL INSURED, BUT ONLY FOR
THE LIMITS AGREED TO IN SUCH CONTRACT OR THE LIMITS OF INSURANCE OF
THIS POLICY, WHICHEVER IS LESS.**

**WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the
Schedule as an insured but only with respect to liability arising out of your acts or omissions.**

SAMPLE



Appendix I - Proposal Questionnaire

To qualify for an LBE rating bonus under the provisions of Admin. Code Chapter 14B, an LBE must be certified by the Contract Monitoring Division by the date that proposals are due. The certification application is available on the web on the Contract Monitoring Division's home page:

<http://www.sfgsa.org/index.aspx?page=6058>

Click on the "12B Equal Benefits Program" link.

1. Are you claiming LBE preference for this proposal per provisions Chapter 14B? Yes No
2. If you answered "Yes" to Question 1. above, check the appropriate box below:

We are currently certified. HRC has issued Certification Number:

We submitted an LBE Certification Application to the HRC on date:

FINANCING AGREEMENT

THIS FINANCING AGREEMENT (hereinafter referred to as “**Agreement**”) dated as of **[insert date]** by and between **[insert name]**, a **[insert type of organization]** corporation (“**Lender**”) and City and County of San Francisco, a municipal corporation and chartered city and county of the State of California (“**City**”), acting by and through **[insert department]**, (“**Department**”).

1. Purpose of Agreement and Term

The purpose of this Agreement is to prescribe the financing provisions, covenants and payment schedules to be made by City for specific equipment described in **Exhibit A** hereto (hereinafter, with all replacements parts, substitutions, proceeds, increases, additions, accessions, repairs and accessories, incorporated herein or affixed thereto, referred to as the “**Equipment**”) for the amounts to be paid in the sums (“**Payments**”) and on the dates (“**Payment Dates**”) together with Payments, the “**Payment Schedule**”) as set forth in **Exhibit B** hereto. Lender has agreed to provide financing to City for the Equipment in an amount not to exceed **[insert amount]** (“**Original Amount**”) for a **[insert time period]** term commencing on **[insert date]**, at a **[insert interest rate]**, computed using a year of 360 days comprised of twelve 30 day months.

[Option A. City Holds Money—Lender shall deposit the Original Amount with the City. City shall use the funds received from Lender to pay for the Equipment.]

Notwithstanding anything to the contrary contained in this Agreement (including, without limitation, any terms and conditions of Lender attached hereto): (a) in no event shall the term of this Agreement be longer than the initial term expressly stated in this Agreement; (b) any automatic renewal or extension (whether or not conditioned upon any notice or absence thereof from either party) or any similar “evergreen” provision shall be deemed null and void *ab initio*; and (c) the term of this Agreement shall not be extended or renewed except by written agreement duly authorized, executed and delivered by City. In the event of any inconsistency within this Agreement relating to the duration of the initial term hereof, the shorter initial term shall govern. If no initial term is stated in this Agreement, then the term shall be one year from the date on which the term commences.

2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Nonappropriation

This Agreement is subject to the budget and fiscal provisions of City’s Charter. Charges will accrue only after prior written authorization certified by City’s Controller and any 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 in the event 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, and Lender’s sole remedy shall be repossession of the Equipment.

This Section shall control against any and all other provisions of this Agreement.

3. Nonappropriation

City agrees that it will take all necessary steps and make timely requests for the appropriation of funds to make all Payments called for under Exhibit B, and use its best efforts and take all steps to cause such appropriations to be made. In the event that no funds have been appropriated for the acquisition of the Equipment, City may terminate this Agreement within 30 days written notice to Lender of City's failure to appropriate sufficient sums to make the required payments for such fiscal year. Such failure to obtain proper appropriation and approval of the full amount of funds necessary to make required payments hereunder during any fiscal year shall terminate all City's right, title and interest in and obligations under this Agreement and to all the Equipment, effective on the last day of the last fiscal year for which appropriation or approval was properly obtained.

4. City's Payment Obligation

In the event any payment of any amount of monies is required by any vendor or manufacturer prior to acceptance of the Equipment by City, Lender is to advance such amounts.

City will make a good faith effort to pay all invoices within thirty (30) days of billing. In no event will City pay any late fees or charges for payments made after said 30-day period.

Lender and City understand and intend that the obligations of City to pay Payments hereunder shall constitute a current expense of City and shall not in any way be construed to be a debt of City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of City.

City shall make Payments, exclusively from legally available funds, to Lender or, in the event of an authorized assignment by Lender to its assignee, according to the terms of this Agreement, upon presentation of invoices furnished by Lender in a form acceptable to the Controller. Payments will be made in United States Dollars by warrant drawn by the Treasurer of City and County of San Francisco. Payments shall be in consideration for City's use of the Equipment during the applicable fiscal year in which such payments are due.

5. Guaranteed Maximum Costs

(a) City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification in accordance with Section 2, hereof.

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

(c) Officers and employees of City are not authorized to offer or promise, nor is City required to honor, any offered or promised additional funding in excess of the maximum amount of funding as set forth in Exhibit B, for which the contract is certified without first obtaining in writing prior certification of the additional amount by the Controller.

(d) The Controller can not authorize payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

6. Submitting False Claims; Monetary Penalties

Any contractor, subcontractor or consultant who commits any of the following acts shall be liable to City for three times the amount of damages which City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall also be liable to City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to City for a civil penalty of up to \$10,000 for each false claim: (a) Knowingly presents or causes to be presented to an officer or employee of 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 City. (c) Conspires to defraud City by getting a false claim allowed or paid by 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 City. (e) Is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

7. Destruction of Equipment

In the event that any Equipment shall be lost, stolen, irreparably damaged or destroyed or otherwise rendered permanently unfit for use from any cause whatsoever prior to the payment in full of all the Payments for the affected Equipment, City shall, subject to Section 2 and upon demand by Lender, within 60 days of such demand, pay to Lender the value of the Equipment, which in no event shall exceed the guaranteed maximum cost set forth in Exhibit B.

8. Insurance

City shall either be self-insured with regard to the Equipment or shall purchase and maintain insurance with regard to the Equipment. Whether City is self-insured or company insured, City shall, for the term of this Agreement, at its own expense, provide comprehensive liability insurance with respect to the Equipment, insuring against such risks, as are customary for lessees of property of a character similar to the Equipment for its full replacement value.

9. Liens

City shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, security interest, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, title thereto or any interest therein, except the respective rights of Lender and City hereunder.

10. Use, Licenses

City will not use or operate the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement.

11. Termination

Unless City has properly exercised its option to prepay pursuant to Section 22 hereof, City shall, upon the termination hereof pursuant to the terms of this Agreement, deliver the Equipment to Lender unencumbered and in at least as good condition and repair as when delivered to City, ordinary wear and tear resulting from proper use alone excepted, by loading the Equipment, at City's sole expense, on such carrier, or delivering the Equipment to such location, as Lender shall provide or designate at or within a reasonable distance from the general location of the Equipment. If City fails to deliver the Equipment to Lender, as provided herein, on or before the date of termination of this Agreement, City shall pay to Lender upon demand, for the hold-over period, a portion of the total payment for the applicable period as set forth in Exhibit B prorated from the date of termination of this Agreement to the date City either redelivers the Equipment to Lender or Lender repossesses the Equipment. At the expiration of the term of this Agreement, and provided that City has prior thereto paid all its obligations hereunder, City shall have the right to hold the Equipment free and clear of any lien created by this Agreement.

12. No Prepayment Penalty

City may elect to prepay any or all of the remaining unpaid balance pursuant to Section 22 of this Agreement. No penalties will be assessed against City for such prepayments (such as, but not limited to, interest and service charges).

13. Representations, Warranties and Covenants by Lender

Lender represents, warrants and covenants to City that as of the date hereof:

- (a) Lender is a for profit corporation organized and existing under the laws of the State of **[insert state]**.
- (b) Lender is duly authorized to enter into this Agreement and the transactions contemplated hereby and to perform all its obligations hereunder.
- (c) Lender is fully capable of bearing the financial risk of entering into this Agreement.
- (d) All requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement against Lender, and this Agreement constitutes a legal, valid and binding obligation of Lender, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

14. Representation, Warranties and Covenants by City

City represents, warrants and covenants to Lender that as of the date hereof:

- (a) City is a municipal corporation and a chartered city and county of the State of California (the "**State**").
- (b) The execution, delivery and performance by City of this Agreement have been duly authorized by all necessary action on the part of City.
- (c) This Agreement constitutes a legal, valid and binding obligation of City enforceable in accordance with its terms.
- (d) City will do or refrain from doing all things necessary or appropriate to insure that the interest portion of the Payments is exempt from federal income taxation, including, but not limited to, executing and filing all information statements prepared by Lender as required by Section 149(e) of the Internal Revenue Code of 1986, as amended, and timely paying, to the

extent of available funds, amounts required to be rebated to the United States pursuant to Section 148(f) of the Internal Revenue Code of 1986, as amended. City acknowledges and agrees that the Payments have been calculated by Lender assuming that the interest portion of each Payment is exempt from federal income taxation.

15. Default

Any one or more of the following are events of default:

- (a) City shall fail to pay, in full, any sum payable by City when due hereunder following Lender's written notice of such failure, to City, except as provided in Section 2 hereof.
- (b) City shall fail to maintain insurance or self-insurance as required in this Agreement.
- (c) Failure or refusal of Lender or City to perform or do any material act herein required.
- (d) Any representation or warranty made by Lender or City hereunder or in any other instrument executed in connection with this Agreement proves to be false or misleading when made.

16. Remedies of Lender

If an event of default shall have occurred, the Lender may to the extent permitted by law:

- (a) Recover the balance of amount owed hereunder, subject to Section 2 hereof.
- (b) Enter any premises where the Equipment may be housed, subject to City's reasonable security requirements at the site, and take possession and title of it or render it unusable, and retain all prior payment as partial compensation for its use and depreciation. Upon repossession or return of the Equipment, Lender will dispose of the Equipment in a commercially responsible manner. Any proceeds of the disposal shall be applied to amounts owed by City for the Equipment. Any excess proceeds shall be returned to City.
- (c) If City has failed to keep the Equipment in good repair or operating condition, except for normal wear and tear given the passage of time and nature of the Equipment to be financed hereby, restore the Equipment to good repair or operating condition at City's expense for actual time and materials expended by Lender at Lender's then current charges, which charges shall be reasonable.
- (d) Pursue any other remedy permitted by law or in equity. The prevailing party in a dispute concerning this financing plan will be entitled to reasonable attorney fees and legal expenses in exercising any of its rights and remedies which a court may require to be paid.

17. Remedies of City

In the event of a default by Lender under this Agreement, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Lender any default by Lender. Lender shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrance at the maximum rate then permitted by law. City shall have the right to offset from

any amounts due to Lender under this Agreement all damages, losses, costs or expenses incurred by City as a result of such default by Lender.

18. Disclaimer of Warranties

Lender makes no agreement, warranty or representation, either express or implied, as to the value, design, condition, merchantability, or fitness for particular purpose or fitness for use of the Equipment, or warranty with respect thereto. City acknowledges that the Lender is not a manufacturer of the Equipment or a dealer therein, and agrees to look directly to the manufacturer or vendor for any warranties or any service for the Equipment. The Lender authorizes City, to the extent permitted by law, to enforce in its own name any warranty, representation or other claim enforceable against the manufacturer or vendor.

19. Indemnification

Lender shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Lender or loss of or damage to property, resulting directly or indirectly from Lender's performance of this Agreement, including, but not limited to, the use of Lender's facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except where such loss, damage, injury, liability or claim is the result of 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 Lender, its subcontractors or either's agent or employee.

In addition to Lender's obligation to indemnify City, Lender 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 Lender by City and continues at all times thereafter.

20. Security Interest

As security for City's covenants and obligations hereunder, City hereby grants to Lender, and its successors, a security interest in the Equipment, all accessions thereto and proceeds therefrom, and, in addition to Lender's rights hereunder, all of the rights and benefits of a secured party under the Uniform Commercial Code as in effect from time to time hereafter in the State in which the Equipment is located or any other State which may have jurisdiction over the Equipment. City agrees to execute, acknowledge and deliver to Lender in recordable form, upon request, financing statements or any other instruments with respect to the Equipment or this Agreement considered necessary or desirable by Lender to perfect and continue the security interest granted herein in accordance with the laws of the applicable jurisdiction.

21. Option to Prepay

On any Payment Date, City shall have the right to prepay Lender any or all of the remaining unpaid balance of the financing of the Equipment by sending Lender written notice thereof. In the notice, City shall specify the Payment Date on which City wishes to prepay. City

shall be obligated to pay on the designated payment due date the unpaid payments constituting principal plus accrued interest to the date City has designated as the purchase date.

22. Taxes

In addition to the Payments, City agrees to indemnify and hold Lender harmless from and against and to pay Lender, as additional rent, on demand, an amount equal to all licenses, assessments, sales, use, real or personal property, gross receipts or other taxes, levies, imposts, duties or charges, if any, together with any penalties, fines, or interest thereon imposed against or on Lender, City or the Equipment by any governmental authority upon or with respect to the Equipment or the purchase, ownership, rental, possession, operation, return or sale of, or receipt of payments for, the Equipment except any federal or state income taxes, if any payable by Lender. City may contest any such taxes prior to payment provided such contest does not involve any risk of sale, forfeiture or loss of the Equipment or any interest therein.

23. Assignment

Notwithstanding any other provision in this Agreement, this Agreement may only be assigned by Lender to an entity that meets the requirements of Sections 31 to 36 hereof. Further, in no event shall all or any portion of this Agreement be assigned without the prior written consent of City which consent shall not be unreasonably withheld. In addition, in no event shall Lender effect a public offering or private of certificates of participation, municipal securities or other debt instruments presenting fractionalized interests in this Agreement. For purposes of this Section, a public offering shall occur when the certificates of participation, municipal securities or other debt instruments are either: (a) offered or sold to more than thirty-five investors; or, (b) offered or sold in denominations of less than \$100,000.

24. Notices to Parties

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

To City: **[insert name or title of department contact person, name of department, mailing address, and fax number]**

with copies to: Mayor's Office of Public Finance
City Hall, Room 336
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Fax: (415) 554-4864
Attn: Director

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Fax: (415) 554-4755
Attn: Finance Team

To Lender: **[insert name of contractor, mailing address, and fax number]**

Any notice of default must be sent by registered mail.

25. Section Headings

All section headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.

26. Waiver

The waiver by either party of any breach by either party of any term, covenant or conditions hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

28. Execution in Counterparts

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

29. Governing Law

This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of California.

30. Entire Agreement; Modifications

This Agreement, together with the Exhibits hereto, constitutes the entire agreement between the parties and this Agreement shall not be modified, amended, altered or changed except in writing as herein provided.

All agreements between the parties are included herein and no promises or statements have been made by either party unless endorsed hereon in writing. No change or waiver of any provisions hereof shall be valid unless made in writing with the consent of both parties and executed in the same manner as this Agreement.

Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

31. Nondiscrimination; Penalties

(a) **Lender Shall Not Discriminate.** In the performance of this Agreement, Lender agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Lender, in any of Lender's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Lender.

(b) **Subcontracts.** Lender 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 (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Lender's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) **Nondiscrimination in Benefits.** Lender 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 or where work is being performed for City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

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

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

32. MacBride Principles—Northern Ireland

City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

33. Tropical Hardwoods and Virgin Redwood Ban

City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product.

34. Sunshine Ordinance

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

35. Notification of Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations of the contract until the later of either (1) the termination of negotiations for such contract or (2) three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

36. Compliance with Laws

Lender shall keep itself fully informed of City's Charter, codes, ordinances and regulations of 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.

37. Prohibition on Political Activity with City Funds

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

38. Nondisclosure of Private Information

As of _____, 200_, Lender agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Lender agrees to all of the following:

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

- (i) The disclosure is authorized by this Agreement;
- (ii) The Lender received advance written approval from the Contracting Department to disclose the information; or
- (iii) The disclosure is required by law or judicial order.

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

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

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

39. Conflict of Interest

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

40. EIC Forms

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

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

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

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

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

CITY

LENDER

Recommended by:

Signature

Signature

Name

Name

Title and Department

Title

Approved as to Form:

Company Name

DENNIS J. HERRERA
City Attorney

Address

By _____
Deputy City Attorney

City State Zip

Approved:

Director of Purchasing