

File No. 120093

Committee Item No. _____

Board Item No. 34

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Board of Supervisors Meeting

Date February 7, 2012

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget Analyst Report
- Legislative Analyst Report
- Youth Commission Report
- Introduction Form (for hearings)
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Ethics Form 126
- Subcontract Budget
- Contract/Agreement
- Award Letter
- Application
- Public Correspondence

OTHER

(Use back side if additional space is needed)

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Completed by: Andrea Ausberry Date February 2, 2012
Completed by: _____ Date _____

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

1 [Accept and Expend Grant - Green Business Tracking Tool - \$59,190]

2
3 **Resolution authorizing the Department of the Environment to retroactively accept**
4 **and expend a grant in the amount of \$59,190 from the California Department of**
5 **Toxic Substances Control to coordinate the Green Business Tracking and**
6 **Measurement Tool.**

7
8 WHEREAS, The California Department of Toxic Substances Control has
9 partnered with local governments, the California Green Business Network and the San
10 Francisco Green Business Program to implement a Green Business Tracking and
11 Measurement Tool; and

12 WHEREAS, The tool allows local Green Business programs to manage
13 environmental data, track the business applications and certifications, and measure the
14 results, through a web-based database; and

15 WHEREAS, This Green Business Tracking and Measurement Tool documents
16 and quantifies the environmental and fiscal benefits of individual Green Businesses, as
17 well as the cumulative environmental and fiscal benefits of Green Business programs;
18 and

19 WHEREAS, Information generated by this Green Business Tracking and
20 Measurement Tool supports local Green Business programs to market their benefits
21 and maximize local program funding resources; and

22 WHEREAS, The California Department of Toxic Substances Control has secured
23 \$59,190 of funding for the San Francisco Green Business Program to continue
24 development of this tool; and

1 WHEREAS, the California Department of Toxic Substances Control is providing
2 these funds to the San Francisco Department of the Environment to lead the California
3 Green Business Network in further development of the Green Business Tracking and
4 Measurement Tool; and

5 WHEREAS, The City and County of San Francisco has committed to an ongoing,
6 coordinated effort to demonstrate the positive effects of Green Business programs on
7 the community and calculate the benefits to participating businesses; and

8 WHEREAS, Continued development of a measurement tool supports the vitality
9 and benefits of the San Francisco Green Business Program and ensures that San
10 Francisco is recognized a leader in creating programs and services with measurable
11 environmental impacts; and

12 WHEREAS, The length of the grant is from October 1, 2011 to June 30, 2012;
13 and

14 WHEREAS, A request for retroactive approval is being sought because the
15 Department of the Environment was not notified of the grant award until September 22,
16 2011 and needed to determine the staffing and budgetary requirements to administer
17 the grant; and

18 WHEREAS, No grant funds will be expended until the San Francisco Board of
19 Supervisors has approved acceptance of the funds; and

20 WHEREAS, The grant budget includes provision for indirect cost of \$5,919; and

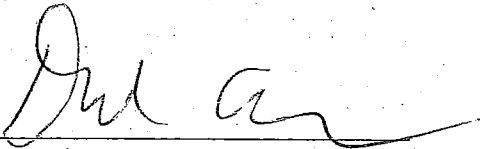
21 WHEREAS, This grant does not require an ASO amendment; now, therefore, be
22 it

23 RESOLVED, That the San Francisco Board of Supervisors authorizes the
24 Director of the Department of the Environment to retroactively accept and expend
25

1 funding in the amount of \$59,190 from the California Department of Toxic Substances
2 Control; and, be it

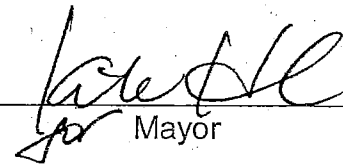
3 FURTHER RESOLVED, That the Department of the Environment is further
4 authorized to furnish whatever additional information or assurances the funding agency
5 may request in connection with this grant, and to execute any and all agreements
6 necessary to carry out the purpose of the grant.

7
8 Recommended:

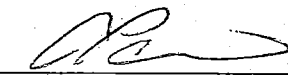
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11 Department Head

Approved:


Mayor

Approved:



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Controller, Grant Division

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: The Department of the Environment
DATE: 1/5/12
SUBJECT: Accept and Expend State Grant
GRANT TITLE: Green Business Tracking and Measurement Tool

Attached please find the original and 4 copies of each of the following:

Proposed Resolution; original signed by Department, Mayor, Controller

Grant information form, including disability checklist

Grant budget

Grant application (There was no application for these funds. The California Department of Toxic Substances Control secured additional funding which they are contracting to SFEnvironment.)

Grant award letter from funding agency

Other (Explain): Legislative Checklist

Special Timeline Requirements:

Departmental representative to receive a copy of the adopted ordinance:

Name: Rachel Buerkle

Phone: 415-355-3704

Interoffice Mail Address:

Certified copy required Yes

No

(Note: certified copies have the seal of the City/County affixed and are occasionally required by funding agencies. In most cases ordinary copies without the seal are sufficient).

File Number: 120093
(Provided by Clerk of Board of Supervisors)

Grant Information Form
(Effective January 2000)

Purpose: Resolution authorizing the Department of the Environment to accept and expend funds in the amount of \$59,190 from the California Department of Toxic Substances Control to coordinate the Green Business tracking and measurement tool.

The following describes the grant referred to in the accompanying Ordinance:

- d. 1. Grant Title: Green Business Tracking and Measurement Tool 220231 / EVGBTT-12
2. Department: Department of the Environment (SF Environment)
3. Contact Person: Rachel Buerkle Telephone: 415-355-3704
4. Grant Approval Status (check one):
 Approved by funding agency Not yet approved
5. Amount of Grant Funding Approved or Applied for: \$59,190
- 6a. Matching Funds Required: No
- b. Source(s) of matching funds (if applicable): N/A
- 7a. Grant Source Agency: California Department of Toxic Substances Control
- b. Grant Pass-Through Agency (if applicable): none
8. Proposed Grant Project Summary:

The California Department of Toxic Substances Control has secured funding to partner with the City and County of San Francisco and the California Green Business Network to continue developing a tool that will allow Green Business programs to manage environmental data, track the business applications and certifications, and measure the results so that statewide programs will be able to demonstrate the positive effects of the Green Business programs on the community and calculate the environmental and fiscal benefits to participating businesses.
9. Grant Project Schedule, as allowed in approval documents, or as proposed:
Start-Date: October 1, 2011 End-Date: June 30, 2012
10. Number of new positions created and funded: None
11. If new positions are created, explain the disposition of employees once the grant ends.
- 12a. Amount budgeted for contractual services: \$5,821
- b. Will contractual services be put out to bid? Services will be procured using proper city contracting procedures.

2009

c. If so, will contract services help to further the goals of the department's requirements? Yes

e. Is this likely to be a one-time or ongoing request for contracting out? One-time

13a. Does the budget include indirect costs? Yes No

b1. If yes, how much? \$5,919

b2. How was the amount calculated? Amount allowed by the funding source.

c. If no, why are indirect costs not included?

- Not allowed by granting agency
- To maximize use of grant funds on direct services
- Other (please explain):

14. Any other significant grant requirements or comments:

****Disability Access Checklist****

15. This Grant is intended for activities at (check all that apply):

- Existing Site(s)
- Existing Structure(s)
- Existing Program(s) or Service(s)
- Rehabilitated Site(s)
- Rehabilitated Structure(s)
- New Program(s) or Service(s)
- New Site(s)
- New Structure(s)

16. The Departmental ADA Coordinator and/or the Mayor's Office on Disability have reviewed the proposal and concluded that the project as proposed will be in compliance with the Americans with Disabilities Act and all other Federal, State and local access laws and regulations and will allow the full inclusion of persons with disabilities, or will require unreasonable hardship exceptions; as described in the comments section:

Comments:

Departmental or Mayor's Office of Disability Reviewer: Claudia Molina *Claudia Molina*
(Name) RB

Date Reviewed: 1/5/12

Department Approval: Melanie Nutter Director
(Name) (Title)

Melanie Nutter
(Signature)

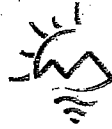
Department of the Environment-City and County of San Francisco (SFE)

**Accept and Expend Grant Funds from
CA Department of Toxic Substance Control**

			DTSC
Personnel			
Green Building Coordinator Environmental Assistant 5638	Coordinate program and contract administration, oversee technical consulting and reporting.		\$ 47,450
Contracts/Grants			
Contractor	Develop database and metrics, interact with Green Business programs and Green Businesses		\$ 5,821
Indirect			\$ 5,919
Grant Total			\$ 59,190



Matthew Rodriguez
Secretary for
Environmental Protection



Department of Toxic Substances Control

Deborah O. Raphael, Director
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806



Edmund G. Brown Jr.
Governor

September 22, 2011

Ms. Melanie Nutter
Department of Environment
City of San Francisco
1390 Market Street, Suite 210
San Francisco, CA 94102

Subject: Contract Number 11-T1027

Dear Ms. Nutter:

Thank you for working with the Department of Toxic Substances Control. Enclosed is the above mentioned Contract for your approval and signature. Checked below are additional requirements needed to bind the Contract.

- Standard Agreement (Std. 213) with attached exhibits. Please re-produce **two (2)** copies of the attached Std. 213, Face Sheet, only. The complete agreement with exhibits should be retained as your pending copy. A copy of Exhibit C, General Terms and Conditions, (GTC) is not provided, however, you may download the language via the Internet at www.ols.dgs.ca.gov and click "Standard Language."
- Payee Data Record (STD 204). No payment can be made unless this form is completed and returned. The 204 is located at www.osp.dgs.ca.gov/Standardforms and then click "Fill and Print."
- Contractor Certification Clauses (CCC). The CCC package contains clauses and conditions that may apply to your agreement and to persons doing business with the State of California. The CCC will be kept on file in a central location and must be renewed every three (3) years and updated as changes occur. This form is available on the Internet at www.ols.dgs.ca.gov and click "Standard Language." Please sign and return the first page of the current CCC. Failure to do so will prohibit the State of California from doing business with your company.
- A copy of the Resolution authorizing this project.

- Performance Bond to cover dollar amount of the Contract.
- A copy of the insurance certification that states coverage as identified in Exhibit D of this Contract will not be canceled without 30 days written notice to the State of California. The certificate must also include the State of California, its officers, agents, and employees as additional insured. Please use language as stated in Exhibit D to assure compliance for the required minimum coverage.

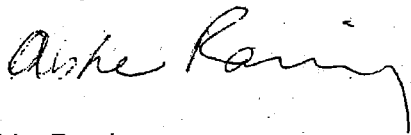
Please return **two (2)** originally signed copies of the STD 213 and any other requested items to the address listed below:

Abbe Ramirez
Contract Development and Implementation Unit
Department of Toxic Substances Control
P.O. Box 806
1001 I Street, Floor 21-5
Sacramento, CA 95812-0806

This Contract cannot be considered binding on either party until approved by appropriate authorized State agencies, therefore, services shouldn't be provided until the Contract is fully executed. The State is not obligated to make any payments on any Contract prior to final approval. After approval, an original copy of the Contract will be returned to you.

If you have any questions or do not have Internet access, please contact me at (916)323-2666.

Sincerely,



Abbe Ramirez
Contract Development and Implementation Unit

Enclosure(s)

cc: Linda Bunyan, Department of Toxic Substances Control

STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213 (Rev 06/03)

AGREEMENT NUMBER 11-T1027
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

Department of Toxic Substances Control

CONTRACTOR'S NAME

City/County of San Francisco

2. The term of this Agreement is: October 1, 2011 through June 30, 2012

3. The maximum amount of this Agreement is: **\$59,190.00**
 Fifty Nine Thousand One Hundred Ninety Dollars and Zero Cents

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work	3 page(s)
Exhibit B – Budget Detail and Payment Provisions	2 pages
Exhibit C* – General Terms and Conditions	GTC 610
Check mark one item below as Exhibit D:	
<input checked="" type="checkbox"/> Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement)	10 page(s)
<input type="checkbox"/> Exhibit - D* Special Terms and Conditions	
Exhibit E – Additional Provisions	2 page(s)

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
 These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		California Department of General Services Use Only
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) City/County of San Francisco		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Melanie Nutter, Director, Department of Environment, City of San Francisco		
ADDRESS 1390 Market Street, Suite 210 San Francisco, CA 94102		
STATE OF CALIFORNIA		
AGENCY NAME Department of Toxic Substances Control		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Sandra Poindexter, Chief, Contracts and Business Management Branch		
ADDRESS 1001 I Street, PO Box 806, Sacramento, CA 95814		

Exempt per:

1. City/County of San Francisco, (Contractor) agrees to enter into a Contract with the Department of Toxic Substances Control (DTSC), to enhance the Green Business Database coding for graphics necessary for consistency to users and complete the design to provide specific recommendations and tactical plans of cost savings and efficiencies to compliment the business pollution prevention action plan. The term of this Contract is through June 30, 2012 for an amount not to exceed \$59,190.00.
2. The DTSC Contract Managers and Contractor Representative during the term of this Contract will be:

<p><u>DTSC Contract Manager</u></p> <p>Linda Bunyan Department of Toxic Substances Control Office of Pollution Prevention and Green Technology 1001 I Street P.O. Box 806 Sacramento, CA 95812-0806 (916) 445-2922 Email: lbunyan@dtsc.ca.gov</p>	<p><u>Contractor Representative and Network Coordinator</u></p> <p>Sushma Dhulipala City and County of San Francisco 1390 Market Street San Francisco, CA 94102 Phone: (415) 355-3758 Fax: (415) 554-8755 Sushma.bhatia@sfgov.org</p>
<p><u>DTSC Project Manager</u></p> <p>Matt McCarron Department of Toxic Substances Control Office of Pollution Prevention and Green Technology Berkeley, CA Phone: (510) 510-3828 Fax: (510) 510-3937 Email: mmccarro@dtsc.ca.gov</p>	

3. The above Managers/Representative may be changed at any time upon written notification to each party with a copy to the DTSC Contract Administration and Purchasing Unit.

Purpose

4. The purpose of this Contract is to ensure coordination between DTSC and/or DTSC's authorized representative and Contractor in the performance of work as set forth in the Scope of Work.

Background

5. The California Green Business Network Management and Measurement System (Database) is a tool for prospective green businesses to apply, and current certified green businesses to re-apply to local Green Business programs throughout the state.

The existing Database program developed through DTSC provides a web-based mechanism for tracking of the applications and approvals by various inspectors, auditors and local government program managers. The Database also allows businesses to up-load performance information which is used to measure and to track the success of their green business efforts. The data in the Database can be utilized by businesses, local programs and DTSC to fulfill Resource Conservation and Recovery Act grant information and commitments to measure pollution prevention. DTSC will also utilize the data as a planning and trend analysis tool.

6. SCOPE OF WORK

The Contractor shall provide access to transfer all of the data in the Database including codes, updates, domain registration ownership and any associated information and documentation related to the Database.

On-going project management to in-person meetings, conference calls, preparation and follow-up from meetings and client requests of status updates.

TASK 1: Contract Management and Administration

Includes Contract overhead and hiring subcontractor to host, maintain and implement improvements in the Database. Additional tasks include working with DTSC's Project Manager on priorities of system changes and with DTSC's Contract Manager on approvals of expenditures for each project task.

TASK 2: Support

This task consists of providing customer and technical support from the Network Coordinator and the DTSC Project Manager to local/county/city Program Coordinators and applicants to:

1. Enable customers to properly utilize the functions of the Database.
2. Make enhancements that ensure that the Database reflects the needs of the users.
3. Add new users or programs to network with appropriate training.
4. This will include project management, communication to scope activities under this task, phone support, email support, user training, aesthetic enhancements, and completion of critical functionality upgrades, new tool development and Quality Assurance/Quality Control of all work completed.

At the start of every month, the Network Coordinator and DTSC Project Manager will agree upon:

5. The feature enhancements to be completed for that month.
6. The specification that defines how the feature will be built into the system.
7. The budget/number of hours for the work to be completed.
8. The testing period to ensure proper functionality of the new feature.

TASK 3: Hosting, Maintenance and Operations (Non-Discretionary)

This task includes work to host the system and complete maintenance activities necessary to keep the system running smoothly and performing well. Activities under this task include Network and Hosting, Supporting Systems, Performance Tuning,

System Upgrades, Optimization, System Reporting, Server Maintenance, Server hosting, SSL Certificate of Authority, Periodic Domain Registration, New Server configuration (as necessary). These tasks will be performed at the discretion of the Contractor or the subcontractor within the budget.

TASK 4: Implementation of Upgrades

Implementation of upgrades to Database by Network Coordinator based on design changes provided by previous contract evaluation, Pier 2 Marketing design contract with network.

1. Business pages upgrade and scorecard implementation.
2. Coordinator pages including auditor and inspector pages.
3. Application, profile and cost saving information.
4. Other report generation features.

BUDGET DETAIL AND PAYMENT PROVISIONS

1. **Invoicing and Payment.**

- A. Contractor will be paid upon satisfactory completion of work and receipt of a proper and complete invoice. Contractor to bill the State in arrears upon completion on each session no more often than quarterly for actual expenditures incurred in accordance with rates specified and by this reference made a part hereof. The Contractor shall carry out the work presented in this Contract on a time and materials basis unless otherwise noted. Any funds not expended in a given month can be carried over and utilized in subsequent months to fulfill any maintenance or performance needs. DTSC Contract Manager or designee to approve and verify invoices.
- B. Invoices shall be submitted in duplicate: one original hard copy on Contractor's letterhead. Submit all invoices to:

Department of Toxic Substance Control
Attn: Chief, Contract Administration and Purchasing
P.O. Box 806
Sacramento, California 95812-0806
Telephone No: (916) 324-3751

2. **Budget Contingency Clause.**

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Contract does not appropriate sufficient funds for the program, this Contract shall be of no further force and effect. In this event, State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Contract and Contractor shall not be obligated to perform any provisions of this Contract.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purpose of this program, State shall have the option to either cancel this Contract with no liability occurring to State, or offer and Contract to Contractor to reflect the reduced amount.

3. **Prompt Payment Clause**

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927. An incomplete/disputed invoice will be returned to the Contractor per Government Code, Chapter 4.5, Section 927.6. Time specified for prompt payment in Government Code, Chapter 4.5, Section 927.4 commences upon submittal of a completed/undisputed invoice.

4. Budget

The Budget shall not exceed \$59,190.00.

BUDGET DETAILS

Phase	FY 11/12
Database Development and Management Tasks	54,165.00
Contingency	5,025.00
Total	\$ 59,190.00

The DTSC Contract Manager or designee may move funds between line items in the Budget as long as it does not exceed the total budgeted amount.

EXHIBIT D

1. **Contract Limits**

Other than as specified herein, no document or communication passing between the parties shall be deemed a part of this Contract.

2. **Approval of Work**

Notwithstanding the Approval Clause in Exhibit C current General Terms and Conditions (GTC) this Contract requires that all work performed shall be inspected, reviewed, and approved by the Contract Manager prior to payment. Payment for services is conditional upon Contractor's conformance to the requirements of the Statement of Work, Exhibit A. The State's acceptance shall not be unreasonably withheld. If any service performed is deemed not acceptable, the Contract Manager or designee shall advise the Contractor in writing what areas are not acceptable.

3. **Assignment of Rights, Delegation of Duties**

Contractor shall not transfer by assignment, delegation, subcontract, or notation the performance or benefits of this Contract or any part thereof, except as provided herein, without the prior written approval of the State. State's consent to one or more assignments, delegations, or subcontracts hereunder shall not constitute a waiver or diminution of State's absolute right to consent to each and every subsequent assignment or subcontract. Contractor may not, without prior written consent of the State, assign any other right.

4. **Audit**

Notwithstanding the Audit Clause in Exhibit C in the current GTC, DTSC adds the following:

Contractor shall comply with the above and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC § 10115.10.

5. **Brokerage or Contingent Fees**

Contractor warrants by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this Contract upon understanding or agreement for a commission, percentage, brokerage or contingent fee, except bona fide employees or established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to terminate this Contract without liability, paying only for the work actually performed, or otherwise recover the full amount of such commission, brokerage or contingency fee.

6. **Confidentiality**

All data and information related to DTSC operations, which are designated confidential by DTSC or developed by the Contractor and deemed confidential by DTSC, shall be

properly safeguarded and protected by the Contractor from unauthorized use and disclosure. At a minimum, during non-working hours, DTSC paper and/or electronic documents, reference materials, or any materials related thereof shall be kept in a locked, secure place. All electronic data shall be password protected and secure at all times.

The Contractor and his/her employees are hereby considered agents only for confidential data purposes and will be liable under the State and Federal statutes for unauthorized disclosures.

The Contractor and all Subcontractors shall immediately notify DTSC of any request from a third party for disclosure of any information relating to this Agreement, including, but not limited to, subpoena, deposition proceedings, court order, or other legal action. Unless DTSC authorizes the disclosure of the information in writing, the Contractor shall use every means, to the maximum extent permitted by law and at no cost to the State, to protect the information from disclosure.

7. **Conflict of Interest**

The Contractor shall disclose any financial, business, or other relationship with DTSC that may have an impact upon the outcome of this Contract and/or any ensuing project to follow. The Contractor shall also list current clients who may have a financial interest in the outcome of this project. This Contract also complies with PCC 10410 and 10411.

8. **Contract Rates**

Contract rates will be paid to the Contractor pursuant to Exhibit B of this Contract. These rates shall be in effect for the Contract term. State and Contractor mutually agree and acknowledge that the budget as identified is for billing purposes and does not necessarily reflect actual amounts paid by Contractor to Subcontractors or employees. This provision is intended for purposes of clarification only and does not relieve Contractor of responsibility for compliance with any other provision of this Contract.

9. **Contractor Resource Levels, Standards**

Contractor shall meet all the contractual requirements and responsibilities listed herein. Contractor shall provide sufficient resources, including staff support, to fully execute all responsibilities required by this Contract. Contractor further agrees that its performance of work and services under this Contract shall conform to professional standards.

During the course of this Contract, the State reserves the right to approve, in advance, in writing, any changes to be made by the Contractor as to the individuals for whom resumes were submitted. DTSC's review and approval shall be made to ensure that individuals replacing key personnel have comparable technical knowledge, experience, and qualifications, in scope, breadth, and depth, to those staff originally accepted as part of this Contract. The review and approval will also be made to better ensure that individuals replacing staff in these key positions shall have the ability to develop cooperative and constructive working relationships in the performance of their duties. State approval shall not be unreasonably withheld.

10. Copyrights and Ownership of Data

The State shall be the owner of all rights, title, and interest in, not limited to the copyright to, any and all data created, provided, or developed under this Contract, whether or not published or produced. The copyright to any and all data created, provided, or developed under this Contract belongs to the State from the moment of creation.

The State retains all rights to use, reproduce, distribute, or display any data created, provided, developed, or produced under this Contract and any derivative products based on Contract data, as well as all other rights, privileges, and remedies granted or reserved to a copyright owner under statutory and common-law copyright law. At any time the Contractor enters into a Contract with another party in order to perform the work required under this Contract, the Contractor shall require the Contract to include language granting the State the copyright for any data created, provided, developed, or produced under the Contract and ownership of any data not fixed in any tangible medium of expression. In addition, the Contractor shall require the other party to assign those rights to the State in a format prescribed by the State. For any data where the copyright is not granted to the State, the State shall retain a royalty-free, nonexclusive, and irrevocable license throughout the world to reproduce, to prepare derivative products, to distribute copies, to perform, to display, or otherwise use, duplicate, or dispose of such data in any manner for governmental purposes and to have or permit others to do so.

All data distributed under the terms of this Contract and any reproductions of data shall include a notice of copyright in a place that can be visually perceived at the direction of DTSC. This notice shall be placed prominently on data and set apart from other matter on the page or medium where it appears. The notice shall state "Copyright" or "©", the year in which the work was created, and "DTSC". When space does not permit, and with advance approval of DTSC Contract Manager or his/her designee, "Department of Toxic Substances Control" may be abbreviated "DTSC".

11. Dispute

Notwithstanding the current GTC and in compliance with PCC 10381, DTSC adds:

Except as otherwise provided, if Contractor disputes a decision of Contract Manager regarding the performance under this Contract or other issue for which Contract Manager is authorized by this Contract to make a binding decision. Contractor shall provide written dispute notice to Contract Manager within fifteen (15) calendar days after the date of receipt of the decision of Contract Manager.

The written dispute notice required shall contain the following information: 1) the decision under dispute; 2) the reason Contractor believes the decision of the Contract Manager is in error; 3) identification of all documents and substance of all oral communication which support Contractor's position; and, 4) the dollar amount in dispute (if known).

Contract Manager will issue a dispute decision within ninety (90) calendar days of receipt of the dispute notice. A copy of this decision shall be sent to Contractor by

certified mail, Return Receipt Requested, or by any other method which provides evidence of receipt.

The decision of Contract Manager will contain the following information: 1) a description of the dispute; 2) a reference to pertinent Contract provisions; 3) a statement of the factual areas of agreement or disagreement; and, 4) a statement of Contract Manager's decision with supporting rationale.

The decision of Contract Manager will be final and conclusive unless within thirty (30) calendar days from the date of receipt of Contract Manager's decision, Contractor files a notice of appeal addressed to the Director, Department of Toxic Substances Control.

In connection with any appeal proceeding under this Contract, both parties shall be afforded an opportunity to be heard and to offer evidence and oral argument in support of their positions. The Director or his designee shall appoint one or more examiners to conduct appeal proceedings and to make recommendations to the Director or his designee as to the proper findings and conclusions to be reached in the appeal. During the pendency of any dispute, Contractor shall diligently continue all Contract work and comply with all Contract Manager orders and directions.

12. Entire Agreement

This Contract supersedes all prior contracts; oral or written, made with respect to the services provided herein.

Furnishing of Property by the State or Purchase of Property with State Funds (only with equipment purchases within Contract)

- A. All equipment, material, supplies, or property of any kind purchased, reimbursed or furnished by the State under the terms of this Contract and not fully consumed in the performance of the Contract shall be the property of the State and shall be subject to the provisions of the paragraph, as well as provisions B through F below.
- B. Inventory and Disposition
 - 1. Contractor shall, at the request of the State, submit an inventory of equipment furnished or purchased under the terms of this Contract. Such inventory will be required not more frequently than annually.
 - 2. At the termination of this Contract, the Contractor shall provide a final inventory to the State and shall at that time query the State as to the State's requirements, including the manner and method, in returning said equipment to the State. Said equipment will be delivered to the Contractor's address as stated in said Contract unless notified by Contractor in writing.
- C. The State may at the State's sole option, through its Office of Procurement, purchase any equipment necessary for this Contract. When this occurs Contractor shall submit to State a separate list of the equipment specifications. State will pay vendor directly for equipment, and title to said equipment will remain with the State. Said

equipment will be delivered to the Contractor's address as stated in said Contract unless notified by Contractor in writing

- D. Title to State property shall not be affected by the incorporation or attachment thereof to any property not owned by the State, nor shall such State property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.
- E. Unless otherwise provided herein, the State shall not be under any duty or obligation to restore or rehabilitate, or to pay the cost of the restoration or rehabilitation of the Contractor's facility or any portion thereof which is affected by removal of any State property.

The Contractor shall maintain and administer, in, accordance with sound business practice, a program for the utilization, maintenance, repair, protection, and preservation of State property to assure its full availability and usefulness for the performance of this Contract. The Contractor shall take all reasonable steps to comply with all appropriate directions and instructions which the State may prescribe as reasonable necessary for the protection of State property.

13. Excise Tax

The State of California is exempt from Federal excise taxes and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Contract. California may pay any applicable sales and use tax imposed by another state.

14. Governing Law

The laws of the State of California shall apply to the Contract to both interpretation and performance.

15. Health and Safety Responsibility

Contractor shall be solely responsible for the health and safety protection of its employees.

16. Licenses

The Contractor shall be an individual or firm licensed to do business in California and shall obtain at his/her expense all license(s) required by law for accomplishing any work required in connection with this Contract.

In the event any license(s) expires at any time during the term of this Contract, Contractor agrees to provide agency a copy of the renewed license(s) within 30 days following the expiration date. In the event the Contractor fails to keep in effect at all times all required license(s), the State may, in addition to any other remedies it may have, terminate this Contract upon occurrence of such event.

17. **News Releases and Publicity**

The Contractor shall not issue any news releases or make any statement to the news media regarding the operational procedures of this Contract, the meetings or decisions related to this Contract, or to the status of work related to this Contract without prior written approval of DTSC.

18. **Patent**

If the development of an invention occurs during the terms of this Contract, the State reserves the rights to assignment and registration of such invention with the U.S. Patents Office. Permission by the State may be granted to inventor for application for Patent with all rights reserved in the State of California.

19. **Payments**

Payments to Contractor shall be considered to include reimbursement for all taxes paid by Contractor under this Contract.

For purposes of time reporting, for increments of more than fifteen minutes and up to thirty minutes will be considered one-half hour for those Contract rate categories based on an hourly rate. Overtime will be compensated at the hourly rate (straight time). No standby time will be compensated.

20. **Personal Services**

This Contract has complied with the Standards set forth in GC Section 19130(b), and PCC Section 10337.

21. **Potential Subcontractors**

Nothing contained in this Contract or otherwise, shall create any contractual relation between the State and any Subcontractors, and no Subcontractor shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its Subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State will have no obligation to pay or to enforce the payment of any moneys to any Subcontractor.

22. **Professional Work**

All work to be performed in accordance with all acceptable State standards.

23. **Progress Reports**

Contractor shall submit progress reports to the State Project Manager, as required, describing work performed, work status, work progress difficulties encountered, remedial action, and statement of activity anticipated subsequent to reporting period for approval

prior to payment of invoices. Contractor to be reimbursed by invoicing, in detail, all costs and charges with Contract Number and sending to designated address.

24. Release of Claims

The acceptance by the Contractor of final payment shall be and shall operate as a release to the State of all claims and all liability to the Contractor for everything done or furnished in connection with this Contract and for every act and neglect of the State and others relating to or arising out of this Contract.

25. Release of Data

The Contractor shall not release or disclose any work products created, produced, or developed pursuant to this Contract to any person, except to Contractor personnel, attorneys, prospective vendors, Contractor's law firms, and other companies or individuals who are necessary for, and are to be directly involved in, the development, production, distribution of the data. Data include, but are not limited to drafts or works in progress. The Contractor shall employ reasonable procedures to protect these data from unauthorized use and disclosure. The State retains the right to approve any procedures employed by the Contractor to comply with this provision.

The Contractor shall not release or disclose to other persons any work/data created, produced, or developed pursuant to this Contract, including but not limited to, drafts prior to DTSC approval of the final work product. The State retains the right to approve any procedures employed by the Contractor to comply with this provision.

26. Resolutions

A copy of a resolution, order, motion, or ordinance of the local governing body by law having authority to enter into proposed Contract authorizing execution of Contracts must be included when contracting parties are county, city, district, boards or commissions (State Administrative Manual Section 2.06(b)).

27. Responsibilities Upon Termination

After receipt of notification of termination of this Contract, and except as otherwise specified by the State, the Contractor shall stop work under this Contract on the date specified in the written notice of termination. In compliance with GC 11010.5(b), the Contractor shall do all of the following:

- a. Place no further orders for materials, services, or facilities except as may be necessary for completion of such portion of the work under this Contract that is not terminated.
- b. Assign to the State, effective on the date of termination, in the manner, and to the extent specified by the State, all of the rights, titles, and interests for the Contractor under the orders in which case the State has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and reduce any settlement amount determined by the amount paid for such orders.

- c. Settle all outstanding liabilities and all claims arising out of such termination of orders and with the approval or ratification of the State to the extent the State may require. The State's approval or ratification shall be final for the purposes of this section.
- d. Upon effective date of termination of the Contract and the payment by the State of all items properly chargeable to the State hereunder, Contractor shall transfer, assign, and make available to the State all property and materials belonging to the State, all rights and claims to any and all reservations.
- e. Take such action as may be necessary, or as the State may specify, to protect and preserve any property related to this Contract which is in the possession of the Contractor and in which the State has or may acquire an interest.

28. Rights to Data

Notwithstanding any other provision of this Contract or its Exhibits, Contractor and DTSC understand and agree that the provision entitled "Copyrights and Ownership of Data" governs all ownership right to data files and databases.

29. Severability

Should any provision of this Contract be declared or found to be illegal, unenforceable, ineffective, or void, then each party shall be relieved of any obligations arising in such provision. All other provisions of this Contract shall remain in effect.

30. Substitution of Subcontractors

After award of a Contract, the successful Contractor must use the DVBE subcontractors and/or suppliers proposed in the bid/proposal to the State unless a substitution is requested. The Contractor must request the substitution in writing to the awarding agency and the awarding agency must approve the substitution in writing prior to commencement of any work by the proposed subcontractor/supplier. At a minimum, the substitution must include: a) a written description of the business enterprise to be substituted, including the DVBE certification status of the firm or if a non-DVBE subcontractor, the reason for this action; and b) a written notice detailing a clearly defined portion of the work identified both as a task and as a percentage share/dollar amount of the overall contract that the substituted firm will perform

31. Termination for Convenience

Notwithstanding the current GTC termination clause, DTSC adds the following:

DTSC may terminate performance of work under this Contract in whole or from time to time, in part, whenever DTSC in its discretion determines that such termination is in the best interests of the State. DTSC shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.

After receipt of a Notice of Termination, and except as directed by DTSC, the Contractor shall proceed with the following obligations, which shall apply immediately regardless of

any delay in determining any payments due to the Contractor under this section. The Contractor shall:

- Stop work as specified in the Notice of Termination.
- Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.
- Terminate all subcontracts to the extent they relate to the work terminated.
- Transfer title and make delivery to DTSC of all articles, materials, work in process, and other things held or acquired by Contractor in connection with the terminated portion of the Contract.
- Resolve all outstanding liabilities arising from the termination of subcontracts and supplier contracts. The resolution of such liabilities shall be subject to DTSC approval or ratification.

Upon receipt of Notice of Termination, Contractor shall be paid, at the rates specified in the Contract, for work performed and expenses incurred prior to the effective date of the Notice of Termination for Convenience and accepted by State that could not by reasonable efforts of the Contractor have been avoided. In no event shall payment for these services and expenses exceed the maximum amount payable under the Contract. Contractor shall submit to DTSC within thirty (30) calendar days an invoice for the amount that represents the work performed and expenses incurred to the effective date of termination.

32. Termination for Default

State may terminate performance of work under this Contract in whole, or in part, whenever Contractor or its subcontractors shall default in performance of this Contract and shall fail to cure such default within a period of ten (10) days (or such longer period as the Contract Manager may allow) after receipt from the Contract Manager of a written notice specifying the default. Such termination shall be referred to herein as "Termination for Default".

If after notice of termination of this Contract for default, it is determined by State or a court that Contractor was not in default or that Contractor's failure to perform or make progress in performance was due to causes beyond the control or was not caused by the error or negligence of Contractor, or any subcontractor, the notice of termination shall be deemed to have been issued as a termination for the convenience of State, and the rights and obligations of the parties shall be governed accordingly.

In the event State terminates this Contract in full or in part as provided in this Termination for Default provision, State may procure, upon such terms and in such manner as the Contract Manager deems appropriate, supplies or services similar to those affected by the termination, and Contractor shall be liable to State for any excess costs reasonably incurred for such similar supplies or services. Contractor shall also be liable for excess administrative costs, if the failure to perform arises out of an intentional act or negligence of Contractor or its subcontractors. Contractor's refusal to accept or perform work assigned under the terms of this Contract shall be deemed an intentional act in default of this Contract.

33. Travel and Subsistence Payments

Reimbursement for necessary travel and per diem expenses shall be at rates not to exceed Department of Personnel Administration's Rules and Regulations. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State. (see <http://www.dpa.ca.gov/jobinfo/statetravel.shtml>) The Contractor shall provide travel and per diem receipts to DTSC.

EXHIBIT E

ADDITIONAL PROVISIONS – DEFINITIONS

1. Accounting Practices and Direct Costs

These costs are allowable for reimbursement to the extent that they are accounted for under generally accepted accounting principles and are reasonable, allocable and accounted for in a manner consistent with the Contractor's established, usual, and accepted accounting practices in charging costs to its other activities. To be reasonable, direct costs cannot exceed that which would be incurred by an ordinary prudent person in the conduct of the competitive business. To be allocable, direct costs performed in the contract must not be otherwise charged to the Contract. Direct costs cannot be unlawful under any applicable statute and cannot be precluded from allow ability by any provision of the particular Contract of concern.

2. Procurement and Contracting Officer or Designee

The Department of Toxic Substances Control Official located in the Contract and Business Management Branch with delegated authority to sign Contracts and amendments. This individual has responsibility for all issues affecting or affected by the general terms and conditions of the Contract and any amendment(s) to the Contract.

3. Contract Manager

The State official designated in the Contract to represent the State in the ongoing management and administration of the Contract and Amendments issued under the authority of the Contract. This individual serves as the focal point for all Contracts between the State and the Contractor.

4. Contractor Representative

The individual designated by the Contractor to represent the Contractor in the ongoing management and administration of the Contract.

5. Contractor

The individual, partnership, association, or any combination thereof, who has entered into a contractual Contract with the State. The State may direct Contractors to work alone or in cooperation with other Contractors depending on the nature of the work required and the services provided by the Contractor.

6. Director

The Director of the Department of Toxic Substances Control, State of California, or Director's designee.

7. Equipment

Any property with an original cost of \$500 or more, exclusive of sales tax; has a normal life of at least four years; and does not change its basic identity with use (e.g., not

consumed by use, such as paper; or converted by fabrication into another form of property).

8. **Excluded Costs- examples of costs which are not allowable:**

- All mileage for ground transportation in excess of the rate prescribed by the State for reimbursement of non-represented employees.
- All advertisement costs.
- All bad debts including losses arising from uncollectible accounts and other claims, such as dishonored checks, employee advances, and related collection and legal costs.
- Unsupported general contingency costs.
- Entertainment costs to include amusements, social activities, and incidental activities relating thereto, such as meals, beverages, lodging, transportation and gratuities.
- All interest, fines and penalties paid on delinquent taxes.
- All other fines and penalties except those incurred as a direct result of compliance with a specific provision of the Contract.
- All gifts, contributions, and donations.
- Losses incurred under other Contracts.
- All Federal income taxes and Federal excess profit taxes.
- All taxes from which the Contractor could have obtained an exemption, but failed to do so.
- Litigation costs (filing fees, legal fees, expert witness fees, and all other costs involved in litigating claims in court or before an administrative board.
- Pre-Contract costs incurred prior to the effective date of the Contract directly pursuant to and in anticipation of the award of the Contract.
- Costs incurred preparing, submitting and supporting bids and proposals.
- Actual losses that could have been covered by permissible insurance or were expressly covered by self-insurance.

11. **Project Manager**

The person or firm designated by the State to coordinate all activities performed by the Contractor under the Contract. Under the direction of the Contract Manager, the Project Manager may serve as the focal point for all work, required reports, billing, and work certification required by the Contract. A State employee will generally carry out these responsibilities or Contractor hired specifically for this purpose.

12. **State**

The State of California acting through the Department of Toxic Substances Control.

13. **Subcontractor**

A legal entity hired directly by Contractor to perform some designated portion of the work Contractor has agreed to perform for the State.

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee:
- An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee:
- 4. Request for letter beginning "Supervisor inquires"
- 5. City Attorney request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No.
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.

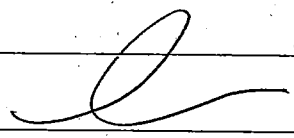
Sponsor(s):

Supervisor Carmen Chu

Subject:

Grant accept and expend to Department of Environment for \$59,190 - Green Business Tracking Tool

The text is listed below or attached:

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

120093

