



Ben Rosenfield
Controller

Todd Rydstrom
Deputy Controller

MEMORANDUM

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

FROM: Michelle Allersma, Director of Budget & Analysis *MA*
Controller's Office

DATE: June 10, 2015

SUBJECT: Support Document Regarding File No. 150577
Draft agreement with Hinderliter, de Llamas

Attached, please find a draft copy of the proposed agreement between the City and County of San Francisco and Hinderliter, de Llamas and Associates for Sales and Use Tax Audit, Analysis and System Services. This agreement is currently under the review of related parties including the City Attorney's Office and Hinderliter, de Llamas and Associates and will be executed before July 1, 2015. The proposed not-to-exceed amount for this agreement is one million five hundred thousand dollars and no cents (\$1,500,000.00) and the proposed term of agreement is from July 1, 2015, to June 30, 2017 with the option to extend the term of the Agreement for up to three additional years, at the City's sole and absolute discretion.

The following person may be contacted regarding this matter:

Yuri Hardin
yuri.hardin@sfgov.org
415-554-7535

**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
Hinderliter, de Llamas and Associates**

This Agreement is made this 1st day of June, 2015, in the City and County of San Francisco, State of California, by and between: **Hinderliter, de Llamas and Associates**, 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 Controller’s Office (“Department”) wishes to engage Contractor for Sales and Use Tax Audit, Analysis and System Services; and,

WHEREAS, a Request for Proposal (“RFP”) was issued on March 10, 2015, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 40778-14/15 on May 18, 2015;

Now, THEREFORE, the parties agree as follows:

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

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

- 2. Term of the Agreement.** Subject to Section 1, the term of this Agreement shall be from July 1, 2015 to June 30, 2017, with the option to extend the term of the Agreement for up to three additional years, at the City's sole and absolute discretion.
- 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, "Services to be Provided by Contractor," attached hereto and incorporated by reference as though fully set forth herein.
- 5. Compensation.** Compensation shall be made in accordance with Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein, for work, as set forth in Section 4 of this Agreement, that the Controller, in his or her reasonable discretion, concludes has been performed. In no event shall the amount of this Agreement exceed **two million five hundred thousand dollars and no cents (\$2,500,000.00)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Controller's Office as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.
- 6. Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.
- 7. Payment; Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice 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."
- 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. 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. Reserved. (Disallowance)

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 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 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 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.
- 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 the Services.
- 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.

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 be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in the Section entitled "Notices to the Parties."

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

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.

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

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. Contractor shall also indemnify, defend and hold City harmless from all suits or claims or administrative proceedings for breaches of federal and/or state law regarding the privacy of sales and use tax records or related topics, arising directly or indirectly from Contractor's performance of this Agreement, except where such breach 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.

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. Reserved. (Liquidated Damages)

20. Default; Remedies.

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

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

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|---|---------------------------------------|
| 8. Submitting False Claims; Monetary Penalties. | 37. Drug-free workplace policy |
| 10. Taxes | 53. Compliance with laws |
| 15. Insurance | 55. Supervision of minors |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment | |

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

3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c)

makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

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

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

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

21. Termination for Convenience.

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

b. Upon receipt of the notice, 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. If City terminates Contractor's performance in accordance with Section 21 herein, Contractor may, subject to review and approval by the City, complete work submitted to the State Board of Equalization (SBE) with an established Date of Knowledge (defined as the quarter during which Contractor notifies the SBE of the existence of a misallocation) and to invoice the City for its fees under the terms of this Agreement for revenue collected by City as the direct result of Contractor's services under this Agreement. In addition, services completed by the effective date of the termination or suspension may result in collection of deficiencies after termination or suspension that may be subject to Contractor's contingency fee. Despite termination or suspension of services under this Agreement, City remains obligated to provide notification and information to Contractor about deficiencies collected by City as the direct result of Contractor's services under this Agreement after termination or suspension. The Contractor's right to payment for deficiencies collected by the City as the direct result of Contractor's services under this Agreement will survive after termination or suspension of this Agreement. If City does not grant approval for Contractor to continue work on a matter with an established Date of Knowledge after termination of this Agreement, Contractor shall immediately return to City all private or confidential information relating to the matter that remain in its possession. Contractor shall be entitled to compensation for matters that it transfers to the City, at the time that City receives additional revenue from deficiencies collected as a direct result of Contractor's efforts. Compensation shall be paid at the rate specified in Appendix B and shall be applied to the portion of revenue received by the City that equals the following as specified in Appendix E:

- 80% for cases transferred from Contractor to City at the Group A stage and corrected at the Group A stage;
- 60% for cases transferred from Contractor to City at the Group A stage and corrected at the Group B stage;
- 80% for cases transferred from Contractor to City at the Group B stage and corrected at the Group B stage;
- 40% for cases transferred from Contractor to City at the Group A stage and corrected at the Group C stage;
- 60% for cases transferred from Contractor to City at the Group B stage and corrected at the Group C stage;
- 80% for cases transferred from Contractor to City at the Group C stage and corrected at the Group C stage;
- 20% for cases transferred from Contractor to City at the Group A stage and corrected at the Group D stage;
- 40% for cases transferred from Contractor to City at the Group B stage and corrected at the Group D stage;
- 60% for cases transferred from Contractor to City at the Group C stage and corrected at the Group D stage;
- 80% for cases transferred from Contractor to City at the Group D stage and corrected at the Group D stage.

In the event City does grant approval for Contractor to continue work on a matter with an established Date of Knowledge after termination of this Agreement, such approval shall be detailed as a modification to this Agreement by written instrument executed and approved in the same manner as this Agreement pursuant to Section 48, Modification of Agreement.

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:

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| 8. Submitting false claims | 24. Proprietary or confidential information of City |
| 9. Disallowance | 26. Ownership of Results |
| 10. Taxes | 27. Works for Hire |
| 11. Payment does not imply acceptance of work | 28. Audit and Inspection of Records |
| 13. Responsibility for equipment | 48. Modification of Agreement. |
| 14. Independent Contractor; Payment of Taxes and Other Expenses | 49. Administrative Remedy for Agreement Interpretation. |
| 15. Insurance | 50. Agreement Made in California; Venue |
| 16. Indemnification | 51. Construction |
| 17. Incidental and Consequential Damages | 52. Entire Agreement |
| 18. Liability of City | 56. Severability |
| | 57. Protection of private information |

Subject to the immediately preceding 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 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: Michelle Allersma, Budget & Analysis Division, Director
City and County of San Francisco Controller's Office
1 Dr. Carlton B. Goodlett Place, Room 312
San Francisco, CA 94102
Phone: (415) 554-4792
Michelle.Allersma@sfgov.org

To Contractor: Andrew Nickerson, President
Hinderliter, de Llamas and Associates
1340 Valley Vista Drive, Suite 200
Diamond Bar, CA 91765
Phone: (909) 861-4335
ANickerson@hdlcompanies.com

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 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 less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

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.

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.

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.** 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.

34. Nondiscrimination; Penalties.

a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or

subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

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

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

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form 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 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 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 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 and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

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

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

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

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

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

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

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

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

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

45. First Source Hiring Program.

a. Incorporation of Administrative Code Provisions by Reference.

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

b. First Source Hiring Agreement.

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

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

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

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

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

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

6) Set the term of the requirements.

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

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

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

c. **Hiring Decisions.**

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

d. **Exceptions.**

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

e. **Liquidated Damages.**

Contractor agrees:

- 1) To be liable to the City for liquidated damages as provided in this section;
- 2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- 3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- 4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;
- 5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:
 - (a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and
 - (b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;Therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.
- 6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law.

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 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.

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.

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 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. (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. Slavery Era Disclosure.

a. Contractor acknowledges that this contract shall not be binding upon the City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director of Administrative Services finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this Contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or \$1,000, whichever is greatest as determined by the Director of Administrative Services. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

c. Contractor shall maintain records necessary for monitoring their compliance with this provision.

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. Definitions for Website Development.

a. **Acceptance Test Specifications.** Shall consist of unit and integration testing by the Contractor, followed by user testing by the City. The acceptance test procedure and technical performance standards agreed to by the Parties shall be set forth in an Acceptance Test Schedule in Appendix B.

b. **Documentation.** Shall mean all documents relating to the operation of the Website provided by the Contractor for the use of City, all of which will be described and itemized in a Documentation Schedule.

c. **Functional Specifications.** Shall mean the written description of the City's requirements, operations, and procedures, which specifications are to be prepared by Contractor and upon written approval by City shall form the basis for the System Design as defined herein.

d. **Milestone Schedule.** Shall mean the specification of the project plan, the itemization of the delivery dates for the Website Deliverables, and the itemization of the payment dates for the Website Deliverables.

e. **System Design.** Shall mean the written design specifications to implement the Functional Specifications, which specifications are to be prepared by the Contractor in consultation with City, and which, upon written approval by City, shall form the basis for the Website as defined herein.

f. **Website.** Shall mean the software containing the information processing instructions specified by the System Design, and all Documentation delivered by Contractor to City to facilitate the use of such website.

g. **Website Deliverables.** Shall mean those items which Contractor commits to provide to City on the dates specified in the Milestone Schedule.

63. Website Implementation

a. **Development of Website.** Subject to the terms and conditions of this Agreement, Contractor agrees to design, develop, and install the Website in the following discrete and sequential phases, each of which will be described in a detailed written Milestone Schedule in Appendix B ("Website Implementation"). In phase one, Contractor will develop the Functional Specifications. In phase two, following written acceptance by City of the Functional Specifications, Contractor will develop and document the System Design in consultation with City. In phase three, following written acceptance by City of the System Design, Contractor will develop and code the Website which will be compliant with City's operating systems designated in the Functional Specifications.

b. **Compliance with Americans With Disabilities Act.** It is the policy of the City and County of San Francisco that websites be designed to be accessible to people with disabilities. Contractor has a responsibility to become familiar with the guidelines for achieving universal accessibility and to apply these principles in designing and creating the website for the Controller's Office. The website should be in full compliance with applicable federal and state disability laws, including the requirements of the Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. Sec. 1201 et seq.) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d). Information about Section 508 may be found at the department of Justice's website at <<http://www.Section508.gov>>.

Title 36 of the Federal Code of Regulations, Section 1194.22, which implements the Rehabilitation Act of 1973, outlines 16 standards, concerning web-based intranet and Internet information and applications. A website will be in compliance with the 508 standards if it meets the requirements of paragraphs (a) through (p) of Section 1194.22. A copy of Section 1194.22 may be found at the US government Printing Office website at <http://www.ecfr.gov/cgi-bin/text->

idx?SID=a95b334c38877a6d1cbfec2914503a28&node=pt36.3.1194&rgn=div5#se36.3.1194_122.

c. **Acceptance of Website Deliverables.** Any Website Deliverables that require sign off by the City will be reviewed, and either signed or returned with comments within 15 business days from date of receipt.

64. Acceptance Procedures for Website Development

a. **Functional Specifications and System Design.** Upon completion of the Functional Specifications and System Design, City will have a period of 15 business days to review the work, following which Contractor will update the Documentation, and City shall then have 15 business days to conduct a final review. In the event of errors in the specifications, City will forthwith report to the Contractor each error in a detailed writing, and Contractor shall correct the error prior to continuing to the next phase.

b. **Program Modules.** Upon completion of the coding of each module, the Contractor will undertake unit testing and correction of any errors in the module. The module will then be delivered to City for acceptance as provided in the Milestone Schedule in Appendix B. Upon completion of the coding and testing of the modules, the Contractor will migrate the Website to the City's servers and will then undertake system integration testing for a period of 30 business days.

c. **City Testing.** Within 7 business days following receipt of written notice by Contractor that the Website is ready for user testing, the City will conduct Acceptance Tests of the installed Website in accordance with the specifications set forth in the Acceptance Test Schedule in Appendix B for a period of 30 business days. If the Website performs in accordance with the specifications contained in the Acceptance Test Schedule, the City will accept the Website in writing; if the Website fails to so perform, the City will deliver to Contractor a written notice. Contractor will promptly upon receipt of City's notice modify the Website to correct the error. Upon receipt of the modified Website, City will promptly perform Acceptance Tests.

d. **Documentation.** Within 15 business days following acceptance of the Website, Contractor shall provide City with 5 copies of the Documentation, which Documentation shall conform to industry standards. City shall be free to make additional copies as needed by City.

65. Property Rights of the Parties.

a. **Ownership of Website.** Upon issuance of final payment for the Website development, Contractor shall convey to City good and marketable title to all Website's HTML, JSP, Java, and scripting code free and clear of all liens, claims, and encumbrances to use in perpetuity.

b. **Ownership of Know-How.** The Parties hereby recognize that the development of the Website requires the professional experience, expertise, and skills acquired by Contractor in the creation of software programs over many years. Consequently, all algorithms, know-how, ideas, techniques, and concepts used by it in developing the Website, including those developed jointly by Contractor and City in the course of this project, shall be the exclusive property of Contractor. Contractor hereby grants a perpetual license to City to use such know-how in the City's maintenance of the Website.

c. **Customer Property.** All data or other materials furnished by the City for use by Contractor under this Agreement shall remain the sole property of the City. All City property shall be returned to City upon issuance of final payment of the Website development.

66. Warranties

a. **Title.** Contractor warrants that, to the best of its knowledge, prior to transfer of title to City the Website developed pursuant to this Agreement will be the sole and exclusive property of Contractor. In accordance with Section 16(b), Contractor will indemnify City against any claim that the Website infringes a copyright or patent right of any third party.

b. **Viruses.** Contractor warrants that when delivered, the Website will be free of viruses, programming code or instruction(s) intentionally constructed with the ability to damage, track, interfere with, or otherwise adversely affect programs or data files.

c. **Website Performance.** Contractor hereby warrants that when fully implemented the Website shall perform substantially in accordance with the Documentation and will meet the performance standards set forth in the Acceptance Test Schedule for a period of 30 business days following acceptance of the Website. Contractor will correct any defects that affect the Website during this warranty period, provided City gives Contractor prompt notice of such failure during the warranty period.

67. **Data Transmission.** The Contractor shall ensure that all physical or electronic transmission or exchange of data with City and/or any other parties expressly designated by City shall take place via secure means (for electronic transmissions using HTTPS or SFTP or the most recent version used in the industry). The Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor. The Contractor shall ensure that no City data of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties. City's data, and Contractor's data center storing such data, must be located and remain within the United States.

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

CITY

CONTRACTOR

Recommended by:

Hinderliter, de Llamas and Associates

Todd Rydstrom
Deputy Controller
Controller's Office

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: _____
Rosa M. Sánchez
Deputy City Attorney

Approved:

Andrew Nickerson, President
Hinderliter, de Llamas and Associates
1340 Valley Vista Drive, Suite 200
Diamond Bar, CA 91765

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

City vendor number: 34380

Appendices

- A: Services to be Provided by Contractor
- B: Calculation of Charges
- C: Designation of Contractor as City's Authorized Representative in Sales or Transactions and Use Tax Records Examination
- D: Sales Tax Audit Work Authorization No. (sample)
- E: Summary of Process for Contesting an Allocation

APPENDIX A – Services to be Provided by Contractor

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

1. GENERAL PROJECT DESCRIPTION

Services required by this Agreement shall include, but are not limited to, the following: Conducting sales and use tax audits, correcting point-of-sale/use reporting errors, providing data on point-of-sale/use taxpayer reporting errors, tracking audit finding revenue allocation, providing sales and use tax training and assistance, providing sales and use tax data, providing sales and use tax analyses and reports, and providing sales and use tax projections and legislative support. These services shall also be provided for any transactions and use tax in effect during the term of this contract.

In conducting sales and use tax audits, Contractor shall examine all tax records of the State Board of Equalization (SBE) pertaining to sales and use tax collected by the SBE on behalf of the City and County of San Francisco (City) and perform ongoing sales tax audits in order to identify and correct "point of sale" and use tax distribution errors and thereby generate previously unrealized sales and use tax revenue for the City.

Information and reports provided by Contractor shall be used by the City Controller's Office to provide both short and long-term projections of local sales and use tax revenue allocations as well as various reports on actual revenues received. The Controller's Office also completes fiscal year end accrual and analytical activities. In addition, the Controller's Office uses sales tax data to estimate the fiscal effect of proposed legislation and ballot items to both local government and the San Francisco economy as a whole.

2. PROJECT DEFINITIONS

Bradley-Burns Uniform Sales and Use Tax Law – A tax law in which a percentage may be added to a state-wide sales tax and that percentage will benefit counties and cities of that state. Commonly referred to as Uniform Local Tax. Generally the revenue obtained from the Uniform Local Tax goes to funding various county and city needs such as transportation and operation funds.
City – The City and County of San Francisco, Office of the Controller
City's Team – Drew Murrell (Citywide Revenue Manager, Project Lead) Yuri Hardin (Budget and Revenue Analyst)
Contractor – Hinderliter, de Llamas and Associates
Contractor's Team – Andrew Nickerson (President, Project Manager) Tom Bachman (Principle, Sales and Use Tax Management Team) Denise Ovrom (Principle, Sales and Use Tax Management Team) Don Vestal (Principle, Sales and Use Tax Management Team)

Matt Hinderliter (Director, Audit Service Team)
Linda Butterfield (Director, Production Service Team)
Robert Gray (Director, Information Technology Team)

NAICS – North American Industry Classification System. The standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

Proposition 172 – Local Public Safety Protection and Improvement Act of 1993. Imposed a ½ cent sales tax that is collected by the State Board of Equalization and apportioned to each county based on its proportionate share of statewide taxable sales. Each county is required to deposit this revenue in a Public Safety Augmentation Fund to be allocated by the County Auditor to the county and cities within the county.

SBE – State Board of Equalization.

Subcontract – Any Agreement between a Subcontractor and a Contractor in which the Subcontractor is hired to perform part of all of the obligations of a Contractor’s contract, where the Contract is funded by the City.

Subcontractor – Any person or firm who is hired by a Contractor to perform part or all of the obligations of Contractor’s contract through a Subcontract.

Triple Flip – In March 2004, California voters approved Proposition 57, the California Economic Recovery Bond Act, which authorized the issuance of up to \$15 billion in bonds to close the State’s budget deficit. \$10.9 billion of these bonds were issued in 2004 and the remainder in 2008. To guarantee bond repayment, a dedicated revenue source was required. The revenue source provided for under the California Economic Recovery Bond Act is ¼ of the sales and use taxes levied for local governments under the Bradley-Burns Uniform Sales Tax law. The bonds are repaid from the revenue received through the shift of the local portion of sales and use taxes plus transfers from the Budget Stabilization Account (BSA) which is a special reserve established in the State’s general fund approved by Proposition 58. The confiscated local sales tax is reimbursed through a series of revenue swapping procedures. These exchanges are referred to as the “triple flip”. The triple flip will continue until the bonds are retired, which is estimated to be during the first quarter of FY2015-16.

VLF – Vehicle License Fee.

3. PROJECT APPROACH

3.1 Project Staffing: The City, in its sole discretion, has the right to approve or disapprove Contractor's personnel, including subcontractor personnel, assigned to perform the services under this Agreement at any time throughout the term of this Agreement.

The City shall have the right to interview and review the qualifications of any new personnel proposed by Contractor. Any change to Contractor's personnel must be approved in writing by the City at least fourteen (14) days in advance of assignment of such personnel by Contractor. Such approval by the City shall not be unreasonably withheld.

3.2 Project Roles and Responsibilities: Contractor's Project Lead shall manage Contractor's Team to ensure that it completes all work and obligations described in this Agreement.

The Controller's Project Lead will provide oversight of the Project to ensure that Contractor is meeting staffing, timeline, budget, and work product targets and deliverables described in this Agreement, will approve contract payments in accordance with Appendix B, and will provide oversight of all contract administration matters.

3.3 Project Management and Communications: The Project requires effective project management, including, but not limited to the following.

- Contractor's Team shall schedule and coordinate conference calls/meetings with the Controller's Office Project Lead as deemed necessary by the City. At minimum, Contractor's Team Project Lead shall participate in each conference call/meeting. As part of these meetings, Contractor's Team shall report on its progress on Project tasks and deliverables for review, input, decision-making, and approval by the Controller's Office Project Lead.
- Written Project progress reports and updates shall be provided to the Controller's Office Project Lead upon request throughout the term of the Agreement and in accordance with Appendix B to this Agreement.

3.4 Data Consistency and Sharing

To ensure data consistency, Contractor shall use and validate the data and data analyses that the City and previous City contractors may have compiled. Contractor shall provide constructive feedback on any data deficiencies or gaps and compile a list of outstanding data needed to complete the Project per the scope described herein. Further, to allow the City to coordinate data requests and data available to inform other City projects, the selected Contractor's findings and data may be shared by the City with other City contractors, as deemed appropriate by the City.

4. TASKS AND DELIVERABLES

Contractor's deliverables shall be professionally organized and presented. Contractor's Team shall provide the Controller's Office Project Lead with deliverables in accordance with Appendix B.

The deliverables review process may be iterative and may, at the City's discretion, require face to face meetings of the City's and Contractor's Teams prior to the City's final approval of work products and deliverables. Contractor is responsible for submitting draft materials to the City's Team for review and incorporating City feedback.

TASK 1: CONDUCT AUDITS

Contractor shall examine all sales and use tax records of the SBE pertaining to sales and use tax collected by the SBE on behalf of the City and perform ongoing sales tax audits in order to identify and correct "point of sale" and use tax distribution errors and thereby generate previously unrealized sales and use tax revenue for the City.

Contractor shall examine district tax, sales tax and use tax records of the SBE provided to City pursuant to Contract under the Bradley-Burns Uniform Sales and Use Tax Law and California Revenue & Taxation Code applicable to transactions and use taxes.

Contractor's sales and use tax audit services shall, at minimum, include five distinct types of audits and services, as follows:

A. NEXUS FIELD AUDITS

Contractor's initial and periodic (every 10 – 12 months) taxable nexus field audits shall include a physical canvassing and evaluation of sales/use tax generating businesses located in the City to detect misallocations. Contractor's field audits shall focus on those businesses located in the City from which the City has not been receiving sales/use tax revenue.

B. PERMITIZATION AUDITS

Contractor's field audits shall facilitate the identification and correction of improperly registered permits for companies including, but not limited to, wholesalers, contractors, processors, manufacturers and other non-retail businesses that do not normally sell merchandise, conduct occasional sales, self-accrue use tax, or are levied deficiency assessments by the state shall be identified and reviewed for potential point-of-sale / use tax operations in the City.

C. TAX AREA CODE (TAC) REVIEW

Not less than every 9 months, Contractor shall review every active account on the SBE's allocation rolls reporting \$50 or more in local tax to ensure proper TAC assignment. Contractor shall use government and private sector mapping and GIS databases to more thoroughly identify businesses in the area, complementing knowledge of businesses identified through physical canvassing particularly for businesses with missing or incomplete signage, or those that are home-based.

D. DEVIATION ASSESSMENT AUDITS

Not less than every 3 months, Contractor shall review its statewide allocation database to identify all accounts (direct allocation as well allocations to the county pools) for which there have been a substantial change in allocation pattern. Currently, Contractor's database includes more than 98.5% of all sales and use tax transactions in California, if this share reduces to 90% or below, Contractor shall notify the City.

E. ACCOUNTS PAYABLE AUDITS

Contractor's accounts payable audits shall include a review of the City's purchases to identify opportunities for the City to capture the current local allocation on purchases subject to use tax and the local district tax where applicable. In this regard, Contractor shall prepare the documentation to facilitate the City's election of such taxes, including assistance in preparing and filing the City's tax returns.

F. QUARTERLY DISTRIBUTION REPORT AUDITS

Beginning July 1, 2015 and every three months thereafter, Contractor shall provide the City with a Quarterly Distribution Report (QDR) with the local allocation amount reflected by sales tax permit number. Contractor's QDR audits shall detect and correct taxpayer reporting errors and thereby generate new, previously unrealized sales/use tax revenue for the City.

TASK 2: CORRECT REPORTING ERRORS

Contractor shall contact personnel in sales, operations and/or tax accounting at each target business to determine whether a point-of-sale/use reporting error exists. Contractor shall provide information requested by the taxpayers that may assist the taxpayer in completing and filing corrected tax returns.

TASK 3: PROVIDE DATA ON REPORTING ERRORS

Contractor shall provide the City with a list of misallocated or under-reporting businesses for City officials to review and authorize prior to any invoicing.

Preparation and Submittal of Corrections: Contractor shall prepare and submit correction petitions addressing each taxpayer reporting error according to SBE requirements. Copies of all transmittal forms and correspondence with the SBE and taxpayers shall be sent by Contractor to City staff..

Appeals: Contractor shall respond to negative findings by SBE with timely reconfirmation documentation in order to preserve the City's original Dates of Knowledge (defined as the quarters during which Contractor notifies the SBE of the existence of a misallocation). Contractor shall also coordinate corrective action with taxpayers and SBE and represent the City before state officials, boards, commissions and committees for the purpose of correcting sales tax distribution errors that have deprived the City of revenue to which it is entitled. This includes representing the City at hearings before the SBE related to incorrect allocations of tax.

TASK 4: TRACK AUDIT FINDING REVENUE ALLOCATION

Contractor shall provide the following reports on a quarterly basis:

Audit Activity Summary – Report shall show current and historical data, broken down by quarter, and include the number of petitions filed with BOE, the number of BOE corrections received, the billable fund transfer and regular payment amounts and the corresponding Contractor's fee.

Audit Recovery Detail – Report shall provide account level detail for current billable recovery and include firm name, permit number, date of knowledge, date of BOE response, number of days the case was pending, current recovery and any relevant comments regarding case status.

TASK 5: PROVIDE SALES AND USE TAX TRAINING AND ASSISTANCE

Contractor shall, when requested by the City, conduct technical seminars for City personnel on California sales and use tax processes. To support in-house efforts to maximize use tax, the seminars shall cover the fundamentals of self-accrual, direct payment permits, purchasing corporations and maximizing "use tax" from construction projects. These seminars are provided at no additional charge to the City.

Data shall be updated quarterly within 5 business days following BOE's publication of the quarterly distribution report. Contractor shall either provide geographical data mapping capability in its proprietary system or else provide City staff with address data in a format which would allow staff to export and map data.

During the contract period the City will implement development of a website offering sales tax *reporting with both time and geographic area dimensions*. To support this project Contractor shall provide and update sales tax remittance and address data in a format, as defined by the City, which easily integrates and refreshes onto the website while respecting SBE confidentiality guidelines for publically accessible data.

TASK 6: PROVIDE SALES AND USE TAX DATA

Contractor shall provide City staff with unlimited access to its quarterly updated web-based sales tax system to facilitate "in-house" analysis and printing of reports. Contractor shall provide current and historical sales tax data on sales tax remittances at the payor level and with the following data types: fiscal year and quarter of remittance (to understand trends in cash received); fiscal year and quarter of revenue earned (to understand trends in economic activity); high level economic sector (e.g. general retail) and more detailed subsector identifier (e.g. apparel stores) and/or four-digit NAICS code and SBE category if possible to facilitate comparisons; address, organized into geocode or other neighborhood designation; and name of owner or permit holder. Data may be provided in a proprietary software system maintained by Contractor or through a non-proprietary system. In either case, data shall be provided in a format allowing the City to export data into a Microsoft Access and/or Excel-compatible format allowing for integration of various databases, i.e. business license and property tax Contractor shall provide City staff with training on the use of any proprietary system. Data in the system shall be updated within 5 business days following BOE's publication of the quarterly distribution report. Contractor shall also provide comparable aggregate quarterly sales and use tax data by economic segment for the state as a whole and for as many California counties and Bay Area cities as possible.

Data shall be updated quarterly within 5 business days following BOE's publication of the quarterly distribution report. Contractor shall either provide geographical data mapping capability in its proprietary system or else provide City staff with address data in a format which would allow staff to export and map data

TASK 7: PROVIDE SALES AND USE TAX ANALYSES AND REPORTS

Beginning July 1, 2015 and every three months thereafter, Contractor shall provide quarterly analyses and reports on San Francisco's sales and use tax trends in relationship to the surrounding market region as well as by individual businesses, business type and geographic areas specified by the City. Contractor shall provide sales and use tax revenue forecasting and cash flow forecast accounting for the triple-flip after its sunset, as well as forecasts or data that would assist City staff in projecting Proposition 172 public safety sales tax and Health and Welfare Realignment sales tax and VLF revenues. These data could include, but are not limited to, projected statewide sales tax receipts; San Francisco's Proposition 172 pro rata share of sales tax receipts; statewide vehicle sales tax receipts.

Contractor shall provide the City with specialized charts and data tables, presentation data and presenters for public meetings and events, and provide the City with business specific revenue estimates, and economic development consulting. Contractor shall provide a quarterly summary of economic news that is one quarter more current than the most current sales tax data availability for the City's use in making projections.

Each quarter, a principal of Contractor shall analyze the City's data in detail and meet with appropriate City officials to review trends, and discuss and make recommendations regarding the budget implications of the quarter's data. The analysis and quarterly meetings shall be performed by seasoned professionals, whose experience and knowledge adds value to the analysis through identification of emerging retail trends, business retention needs, leveraging of economic clusters and review of successes in client jurisdictions with similar characteristics.

TASK 8: PROVIDE SALES AND USE TAX PROJECTIONS AND LEGISLATIVE SUPPORT

Contractor shall serve as the City's resource and provide assistance, resolution, and follow-up services on sales and use tax related questions including budget projections, legislative and regulation issues and economic development.

With regard to legislative and regulatory issues, Contractor shall, on behalf of the City:

- Remain attentive in its action on any future proposed changes to regulatory language in SBE regulations related to the situs-based allocation of sales tax revenues and the formal practicing rules, which govern how Contractor pursues the collection of revenues.
- Take action, subject to City review and approval, on measures that threaten and delay revenue cash flows to the City. This could include attending legislative hearings and explaining to the City the potential effect of proposed legislation on the City.
- Advocate and provide problem-solving and resolution assistance to City on issues as needed and as requested by City. Contractor shall work with City staff to develop language for review and approval by the City that would preserve, protect and enhance City revenues.

With regard to budget projections, Contractor shall provide the City with a forecast of five fiscal years, including quarterly cash flow estimates accounting for the triple flip with historical and estimated sales taxes.

TASK 9: DEVELOP A WEBSITE FOR SALES AND USE TAX DATA

Contractor and any subcontractor shall develop a website using a Geographic Information System (GIS) software under the supervision of the City within twelve months of the contract starting date, which shall: (1) provide sales tax data for any geographic area or areas within the City as selected by website users from an interactive map of the City; (2) provide historical sales tax data for any geographic area or areas within the City; (3) provide a sortable breakdown of sales tax data by business type; (4) allow users to download the record data into various file types including but not limited to excel (EXL) and comma-separated values (CSV); and (5) adhere to Board of Equalization data confidentiality restrictions.

It is the policy of the City and County of San Francisco that websites be designated to be accessible to people with disabilities. Contractor has a responsibility to become familiar with the guidelines for achieving universal accessibility and to apply these principles in designing and creating the website required under this solicitation. The website should be in full compliance with applicable federal and state disability access laws, including but not limited to the requirements of the Americans with Disabilities Act of 1990 (ADA, as amended (42 U.S.C. Sec. 1201 et seq.) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d).

Contractor shall provide enhanced functionality and troubleshooting after establishing the website as requested by the City.

Title 36 of the Federal Code of Regulations, Section 1194.22, which implements the Rehabilitation Act of 1973, outlines 16 standards, concerning web-based intranet and Internet information and applications. A

website will be in compliance with the 508 standards if it meets the requirements of paragraphs (a) through (p) of Section 1194.22. A copy of Section 1194.22 may be found at the US government Printing Office website at <http://ecfr.gpoaccess.gov/cgi/t/text/textidx?c=ecfr&sid=3ae7c83dcb33f43e87ea99d1f735a30c&rgn=div&view=text&node=36:3.0.9.1.9.2.5.2&idno=36>.

A. Definitions for Website Development.

- a. Acceptance Test Specifications.** Shall consist of unit and integration testing by Contractor, followed by user testing by the City. The acceptance test procedure and technical performance standards agreed to by the Parties shall be set forth in an Acceptance Test Schedule in Appendix B.
- b. Documentation.** Shall mean all documents relating to the operation of the Website provided by Contractor for the use of City, all of which will be described and itemized in a Documentation Schedule.
- c. Functional Specifications.** Shall mean the written description of the City's requirements, operations, and procedures, which specifications are to be prepared by Contractor and upon written approval by City shall form the basis for the System Design as defined herein.
- d. Milestone Schedule.** Shall mean the specification of the project plan, the itemization of the delivery dates for the Website Deliverables.
- e. System Design.** Shall mean the written design specifications to implement the Functional Specifications, which specifications are to be prepared by Contractor in consultation with City, and which, upon written approval by City, shall form the basis for the Website as defined herein.
- f. Website.** Shall mean the software containing the information processing instructions specified by the System Design, and all Documentation delivered by Contractor to City to facilitate the use of such website.
- g. Website Deliverables.** Shall mean those items which Contractor commits to provide to City on the dates specified in the Milestone Schedule.

B. Website Implementation

Development of Website. Subject to the terms and conditions of this Agreement, Contractor agrees to design, develop, and install the Website in the following discrete and sequential phases, each of which will be described in a detailed written Milestone Schedule in Appendix B ("Website Implementation"). In phase one, Contractor will develop the Functional Specifications. In phase two, following written acceptance by City of the Functional Specifications, Contractor will develop and document the System Design in consultation with City. In phase three, following written acceptance by City of the System Design, Contractor will develop and code the Website which will be compliant with City's operating systems designated in the Functional Specifications.

C. Acceptance Test Schedule

Acceptance testing is the process by which the website will be validated against the documented functional specifications and system design.

Activity	Owner	Planned Completion Date	Actual Completion Date	Deliverable
Schedule acceptance testing	Contractor	9/3/2015		Final Acceptance Test Schedule
Create Test Materials	Contractor	9/17/2015		Acceptance Test Matrix
Provide Test Environment	Contractor	11/5/2015		Contractor hosted private test environment
Execute Tests	City	11/19/2015		Acceptance Test Summary Report
Complete Acceptance Testing	Contractor/City	12/10/2015		Final Acceptance Test Report

D. Documentation Schedule

Contractor will provide the following documentation deliverables:

User Manual – the user manual is intended for use by City staff, and is not for distribution to the public or any 3rd party. The manual will contain a website map, screenshots, and documentation regarding the functionality and usage of each aspect of the website. As a user manual, this document will focus on the user interface and all user facing functionality.

Website Integrated Documentation – the website will contain integrated self-documentation, through a simple to use interface and in line guidance where appropriate. Some examples of system integrated documentation are user prompts, tool-tips, instructional text, etc.

The below schedule defines when the documentation will be available.

NOTE - website integrated documentation will be part of the functional specification and system design, so it is not incorporated into the Documentation Schedule.

Activity	Planned Completion Date	Actual Completion Date	Deliverable
Create User Manual	10/15/2015		Draft of User Manual
Revise User Manual (if needed)	11/5/2015		1.0 User Manual

E. Functional Specifications

- a. **Geographic Area Selection.** Contractor will determine the smallest segment of reportable area to protect the confidentiality of the sales tax information. User will be able to define a geographic area which comprises of the defined segment(s) directly from the map and the website will provide sales tax data per pertaining to businesses located within that selected area.
- b. **Historic Data.** Available data for each area will include historical data. Per-capita totals will also be available for the same time periods. The maximum duration of historical data available on the website will be determined at the City's discretion.
- c. **Breakdown of Data.** When geographic areas are large enough to allow non-confidential reporting by major industry group (7 groups defined by Contractor), these groupings will be available in a sortable table format.
- d. **Data Export Options.** User will be able to download the historic data for the selected geographic area, including breakdown by major industry groups. File formats will include but not limited to Excel (.xlsx) or comma-separated value (.csv).
- e. **Confidentiality.** Sales tax data will be aggregated or withheld in compliance with Board of Equalization guidelines to protect the confidentiality of the tax information for individual businesses. Aggregate totals shall not be made available in a manner that would result in trivial derivation of confidential information.
- f. **Internal Data Access.** Website will have log on feature for access to data without restrictions applied to public users. Site will be secured with SSL certificate for encrypted sign on and data access.

F. Website Deliverables

Contractor will deliver the fully functional website and will include the following deliverables:

- Written service level agreement (SLA) describing uptime requirements, support options and roles of responsibilities.
- Domain name for website will be purchased and managed by Contractor.
- SSL certificate for website will be provided by Contractor.
- Site will be hosted by Contractor.

G. Milestone Schedule

The following primary milestones have been identified for this project:

Activity	Planned Completion Date	Actual Completion Date
Sign Agreement	7/2/2015	
Deliver User Manual	11/5/2015	
Provide Test Environment	11/5/2015	
Complete Acceptance Testing	12/10/2015	
Website goes live	1/7/2016	

5. AS-NEEDED SERVICES

Contractor shall provide additional services on an as-needed basis, as determined and requested by the City, which may consist of projects related to conducting sales and use tax audits, correcting point-of-sale/use reporting errors, providing data on point-of-sale/use taxpayer reporting errors, tracking audit finding revenue allocation, providing sales and use tax training and assistance, providing sales and use tax data, providing sales and use tax analyses and reports, and providing sales and use tax projections and legislative support.

Any as-needed services are subject to the City's review and approval of scope and budget, including staffing, timeline, deliverables, and costs. In accordance with the terms and conditions of the solicitation under which Contractor was selected for these services, costs shall be included in the contingency fee of new sales and use tax income actually received by the City as a result of Contractor's services, indicated in Appendix B, unless otherwise negotiated for a fixed, not-to-exceed price.

Appendix B - Calculation of Charges

In accordance with Section 5 of this Agreement, the Contractor's total compensation under this Agreement is detailed below, inclusive of all costs and meetings required to complete all work specified in Appendix A.

Project – Sales and Use Tax Audit, Analysis and System Services

Payment Requests and Insurance Documentation should be sent to:

Controller's Office – Central Finance
Attn. Yuri Hardin
City & County of San Francisco
1 Dr. Carlton B. Goodlett Place, City Hall, Rm 482
San Francisco, CA 94102

Electronic invoices should be sent to: centralfinance@sfgov.org.

Insurance Documentation should be sent to:

Controller's Office – Contracts Unit
Attn. Joyce Kimotsuki
City & County of San Francisco
1 Dr. Carlton B. Goodlett Place, City Hall, Rm 306
San Francisco, CA 94102

Payments for Tasks and Deliverables

Contractor's fee for sales and use tax audit, analysis and system services is entirely predicated and contingent on Contractor's ability to produce new sales and use tax revenue for the City.

Contractor's compensation for the Sales and Use Tax Audit, Analysis and System Services is an 20% contingency fee of new Bradley Burns sales and use tax income actually received by the City as a result of Contractor's services. This fee applies to revenue received for all eligible quarters prior to the quarter in which the Date of Correction (defined as the quarter in which the taxpayer has correctly reported the local tax and the SBE distributes the local tax properly to the City based on the taxpayer's reporting) falls, back to and including the three quarters prior to the Date of Knowledge quarter (defined as the quarter during which Contractor notifies the SBE of the existence of a misallocation), and for four quarters beginning with the quarter in which the Date of Correction falls. For QDR misallocations detected and corrected, Contractor's compensation shall only include the quarters in which the misallocation actually occurred. Contractor is authorized by this Agreement to examine district tax, sales tax and use tax records of the SBE provided to City pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law and California Revenue & Taxation Code applicable to transactions and use taxes. Contractor is required to disclose information contained in, or derived from, those sales and use tax records only to an officer or employee of the City who is authorized by resolution to examine the information. Contractor is prohibited from performing consulting services for a retailer during the term of this Agreement. Contractor is prohibited from retaining the information contained in, or derived from, those sales and use tax records, after this Agreement has expired.

New sales and/or use tax revenue shall not include any amounts determined by the City or Contractor to be incrementally attributable to causes other than Contractor's work pursuant to this Agreement. In the event that Contractor is responsible for an increase in the tax reported by businesses already properly making tax payments to the City, it shall be Contractor's

responsibility to separate and support the incremental amount attributable to its efforts prior to the application of the audit fee. Contractor shall provide the City with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees.

Contractor shall obtain the City's approval prior to beginning the work of correcting tax reporting methodology or "point of sale" for specific businesses where said payment of the percentage fee will be expected. Said approval will be provided by the Controller or his designated representative on the Sales Tax Audit Authorization form, a copy of which is attached as Appendix D. Upon approval, the City will pay audit fees upon Contractor's submittal of evidence of State Fund Transfers and payments to San Francisco from businesses identified in the audit and approved by the City. Payments will be made by City to Contractor after the City has accepted as satisfactory, in the City's sole and absolute discretion, the services rendered by the Contractor to the City in accordance with this Agreement.

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Appendix C
Designation of Contractor as City's Authorized Representative
in Sales or Transactions and Use Tax Records Examination

On behalf of the CITY AND COUNTY OF SAN FRANCISCO ("City"), the City and County of San Francisco Controller's Office ("City Controller's Office"), through this Agreement, hereby designates the Contractor as the authorized City's representative to examine sales or transactions and use tax records.

WHEREAS, pursuant to California Revenue and Taxation Code Section 7056, the City, may designate any officer, employee or any other person to examine all of the sales or transactions and use tax records of the State Board of Equalization ("Board of Equalization") pertaining to sales or transactions and use taxes collected for the City; and

WHEREAS, the City has entered into an agreement for sales tax audit and information services with the firm of Hinderliter, de Llamas and Associates, to designate Hinderliter, de Llamas and Associates ("Contractor") as the authorized Contractor to examine such sales tax records maintained by the Board of Equalization on behalf of the City;

NOW, THEREFORE:

1. In all respects as set forth above, the City Controller's Office hereby certifies to the Board of Equalization that the Contractor is the designated representative of the City to examine all of the sales or transactions and use tax records of the Board of Equalization pertaining to sales or transactions and use taxes collected by the Board of Equalization on behalf of the City.
2. Pursuant to California Revenue and Taxation Section 7056(b), the City certifies that the Contractor meets all of the following conditions:
 - a. Contractor has an existing contract with the City to examine sales or transactions and use tax records;
 - b. Contractor is required to disclose information contained in, or derived from, those sales or transactions and use tax records only to an officer or employee of the City who is authorized by resolution to examine the information;
 - c. Contractor is prohibited from performing consulting services for a retailer during the term of the contract; and
 - d. Contractor is prohibited from retaining the information contained in, or derived from, those sales or transactions and use tax records after the contract has expired.

The Contractor's compensation shall be 20% of the new Bradley Burns sales and use tax income received by the City as a result of audit and recovery work performed by the Contractor, as set forth in this Agreement.

City and County of San Francisco

By: _____

Printed Name: Michelle Allersma

Date: _____

Appendix D
Sales Tax Audit Work Authorization No. _____

The following business or businesses, located in the City and County of San Francisco, have been identified as having the potential for generating additional sales tax revenue to the City and County of San Francisco. The Contractor is hereby authorized to contact the given businesses) and the State Board of Equalization to verify the accuracy of the current reporting methodology and obtain the necessary documentation for the Board of Equalization, to modify allocation formulas, and to return previous misallocated revenue that may be due to San Francisco.

The Contractor's compensation shall be 20% of the new Bradley Burns sales and use tax income received by the City and County as a result of audit and recovery work performed by the Contractor, as set forth in the Agreement between the Contractor and the City and County of San Francisco.

City and County of San Francisco

By: _____

Printed Name: Drew Murrell

Date: _____

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APPENDIX E – Summary of Process for Contesting an Allocation

GROUP A – Getting on the list

These are the steps taken to discover an error and establish a Date of Knowledge.

TASK 1. An error is discovered.

TASK 2. The local jurisdiction submits a petition containing sufficient factual data to support the probability that local tax has been erroneously allocated and distributed, or that district tax has not been distributed or has been erroneously distributed.

GROUP B – Getting a decision at the Allocation Group level

TASK 3. The Board of Equalization Allocation Group will acknowledge and review the petition and issue a written decision to grant or deny it, including the basis for that decision.

TASK 4. If a decision is not issued within six months of the date a valid petition is received, the petitioner may request a decision without regard to the status of its investigation.

TASK 5. If the decision is that an error did occur, a copy of the decision will also be mailed to any substantially affected jurisdiction (certain losing jurisdictions) who may appeal the decision by submitting a written objection within 30 days.

GROUP C – Getting a decision at the Appeals Division level

Step 6 is usually a one or two page objection. The bulk of the work in Quarter 3 is preparing for and arguing the conference. This requires a full development of the facts and any expansion of arguments.

TASK 6. The petitioner or any notified jurisdiction may appeal the supplemental decision within 30 days (60 days if an extension is requested and granted) from the date of mailing. The appeal must state the basis for the objection and include all additional information in its possession that supports its decision.

TASK 7. If a timely objection to its supplemental decision is submitted, the Allocation Group will forward the file to the Appeals Division.

TASK 8. A conference will be scheduled between the petitioner, all notified jurisdictions, and the Sales and Use Tax Department.

TASK 9. Each participant is asked to submit all facts, law, argument, and other information in support of its position to all the participants at least 15 days before the date of the conference.

TASK 10. Generally, within 90 days following the conference, the Appeals Division will prepare a written Decision and Recommendation (D&R) detailing the applicable facts and law(s), and the conclusions reached.

GROUP D – Getting a decision at the Board Member level:

These steps are for decision at the Board.

TASK 11. The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing within 60 days of the date of mailing of the D&R.

TASK 12. If the D&R or SD&R denies the petition, the petitioner or any notified jurisdiction has 60 days from the date of the mailing to request a Board hearing.

TASK 13. Briefs may be submitted for the Board hearing.

TASK 14. The Board's final decision on a petition for reallocation exhausts all parties' administrative remedies on the matter.

TASK 15. The matter may then be appealed to the Superior Court.

PAYMENT MATRIX

Payment Matrix					
		Correction			
		Group A	Group B	Group C	Group D
Transfer	Group A	80%	60%	40%	20%
	Group B		80%	60%	40%
	Group C			80%	60%
	Group D				80%
	Group D				80%