

File No. 230039

Committee Item No. 1

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date February 8, 2023

Board of Supervisors Meeting Date \_\_\_\_\_

#### Cmte Board

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- Contract Modification 1 6/1/2022
- Office of Contract Administration Presentation 2/8/2022
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Completed by: Brent Jalipa Date February 2, 2023

Completed by: Brent Jalipa Date \_\_\_\_\_

1 [Contract Amendment - Granite Rock Company - Purchase of Petroleum, Emulsions,  
2 Sealants, and Concrete Base - Not to Exceed \$23,889,728]

3 **Resolution authorizing the Office of Contract Administration to execute a second**  
4 **amendment to Contract 1000016483 with Granite Rock Company for the purchase**  
5 **of petroleum, emulsions, sealants, and concrete base by City departments,**  
6 **increasing the contract amount by \$13,989,728 for a total not to exceed amount of**  
7 **\$23,889,728 and extending the term by two years for a total contract duration of**  
8 **seven years from November 1, 2019, through to October 31, 2026.**

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

12 WHEREAS, The contract was competitively procured pursuant to Administrative  
13 Code, Section 21.1, through Sourcing Event 0000002701 issued by the Office of  
14 Contract Administration (OCA) on August 12, 2019; and

15 WHEREAS, The solicitation resulted in an award to Granite Rock Company as the  
16 lowest responsive bidder, with an initial contract amount of \$7,687,850 and duration of  
17 three years, from November 1, 2019, through October 31, 2022; and

18 WHEREAS, On June 10, 2022, OCA executed Amendment 1 whereby the  
19 contract not-to-exceed amount was increased to \$9,900,000 and its duration was  
20 extended by two years to October 31, 2024; and

21 WHEREAS, OCA seeks to execute Amendment 2, increasing the contract not-to-  
22 exceed amount to \$23,889,728 and extending the duration by two years, to October 31,  
23 2026, to meet City business needs; and

24 WHEREAS, This contract is critical as part of maintaining the City's infrastructure  
25 to ensure safe, paved streets for transportation needs of pedestrians, cyclists, motorists,

1 and the people of San Francisco; and the approval of this Resolution will allow City  
2 departments to continue procuring the materials required for their work in a streamlined  
3 and cost-efficient manner; and

4 WHEREAS, The amendment referenced above is on file with the Clerk of the  
5 Board of Supervisors in File No. 230039, which is hereby declared to be part of this  
6 Resolution as if set forth fully herein; now, therefore, be it

7 RESOLVED, That the Board of Supervisors, under Charter, Section 9.118(b),  
8 hereby authorizes the Office of Contract Administration to execute Amendment No. 2 to  
9 Contract 1000016483 with Contractor, increasing the contract amount by \$13,989,728  
10 for a total not to-exceed amount of \$23,889,728, and extending the duration by two years  
11 to October 31, 2026, for a total duration of seven years; and, be it

12 FURTHER RESOLVED, That within 30 days of the amendment being fully  
13 executed by all parties, the Purchaser shall provide the final copy of the amendment to  
14 the Clerk of the Board for inclusion into the official file.

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<p><b>Item 1</b> <b>File 23-0039</b></p>	<p><b>Department:</b> Office of Contract Administration (OCA)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution would approve Modification No. 2 to the asphalt materials (petroleum, emulsions, sealants, and concrete base) purchasing contract between the Office of Contract Administration (OCA) and Granite Rock Company, extending the contract term by two years through October 2026, and increasing the not-to-exceed amount by \$13,989,728, for a total not to exceed \$23,889,728.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• In 2019, OCA issued an Invitation for Bids (IFB) for suppliers of asphalt materials. Granite Rock Company was the only bidder and was awarded a contract for a term of three years and an amount not to exceed \$7,687,850. In June 2022, OCA executed Modification No. 1 to the contract, extending the term by two years through October 2024, and increasing the not-to-exceed amount by \$2,212,150, for a total not to exceed \$9,900,000. OCA has determined that due to high inflation, it would be beneficial to the City to extend the Granite Rock Company contract rather than issue a new IFB.</li> <li>• Under the contract, Granite Rock Company supplies various asphalt products at set prices. Pricing may be increased or decreased by request once per year based on the percentage change in the Producer Price Index (PPI) for asphalt products.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The proposed Modification No. 2 would increase the not-to-exceed amount of the contract by \$13,989,728, for a total not to exceed \$23,889,728. To date, contract expenditures have been funded approximately 95.2 percent by the City’s General Fund (through the Department of Public Works), approximately 4.6 percent by the SFPUC Water Enterprise operating funds, and approximately 0.2 percent by Port operating funds.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>• As a petroleum-based product, asphalt prices may fluctuate dramatically. The contract pricing may be adjusted next in June 2023.</li> <li>• The Budget &amp; Legislative Analyst reviewed seven contracts for goods, commodities, and non-technology services procured or amended by the Office of Contract Administration in 2022 and found that each had an average of two bids.</li> </ul> <p style="text-align: center;"><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> <li>• Request a report from the Purchaser and City Administrator by June 2023 that: (1) assesses existing procurement strategies and municipal code requirements, (2) evaluates the feasibility of partnering with other governments to increase the number of joint procurements that the City participates in, and (3) provides recommendations to increase the number of bidders for goods, commodities, and services.</li> </ul>	

**MANDATE STATEMENT**

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

**BACKGROUND**

In 2019, the Office of Contract Administration (OCA) issued an Invitation for Bids (IFB) for suppliers of asphalt materials (petroleum, emulsions, sealants, and concrete base). Granite Rock Company was the only bidder and was awarded a contract.<sup>1</sup> In November 2019, OCA executed a contract with Granite Rock Company for a term of three years, from November 2019 through October 2022, and an amount not to exceed \$7,687,850. In June 2022, OCA executed Modification No. 1 to the contract, extending the term by two years through October 2024, and increasing the not-to-exceed amount by \$2,212,150, for a total not to exceed \$9,900,000.

Under Modification No. 1, Granite Rock Company’s pricing increased by 47.6 percent due to an increase in the Producer Price Index (PPI) for asphalt, consistent with the terms of the contract (and included in the IFB).<sup>2</sup> OCA has determined that due to high inflation, it would be beneficial to the City to extend the Granite Rock Company contract rather than issue a new IFB. According to Taraneh Moayed, OCA Assistant Director, securing a new contract would likely not result in better pricing than provided by Granite Rock Company, and may lock the City into higher base rates subject to future PPI increases. OCA and Granite Rock Company have agreed to extend the contract term through October 2026, the maximum allowable term under the IFB. Should inflationary pressures ease before the contract end date, OCA will revisit the possibility of terminating this as-needed contract before October 2026 and rebidding this contract to secure better pricing.

**DETAILS OF PROPOSED LEGISLATION**

The proposed resolution would approve Modification No. 2 to the asphalt materials purchasing contract between OCA and Granite Rock Company, extending the contract term by two years through October 2026, and increasing the not-to-exceed amount by \$13,989,728, for a total not to exceed \$23,889,728. Other terms of the contract would not change.

Under the contract, Granite Rock Company supplies various asphalt products at set prices. Pricing may be increased or decreased by request once per year based on the percentage change in the

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<sup>1</sup> According to Assistant Director Moayed, OCA invited four suppliers to the sourcing event for the IFB and posted the FB to the City’s Partner’s website for all interested parties to bid. The IFB included a requirement that the contractor have storage warehouse, distribution facility, parking area and will-call counter (for City Department pickups) located within San Francisco, which may have contributed to the low number of bids.

<sup>2</sup> According to the Bureau of Labor Statistics, the PPI value for asphalt increased 47.6 percent, from 228 in September 2019 to 336.536 in April 2022.

PPI for asphalt products. The contract may be used by any City department, and to date it has been used by the Department of Public Works, Public Utilities Commission (SFPUC), and the Port.

**FISCAL IMPACT**

The proposed Modification No. 2 would increase the not-to-exceed amount of the contract by \$13,989,728, for a total not to exceed \$23,889,728. Actual contract expenditures through December 2022 total \$7,898,636. Using actual expenditures from FY 2019-20 through FY 2022-23, OCA projects average future contract expenditures of \$346,832 per month.<sup>3</sup> Actual and projected expenditures are shown in Exhibit 1 below.

**Exhibit 1: Actual and Projected Expenditures**

Actual Expenditures (through December 2022)	\$7,898,636
Projected Expenditures per Month	346,832
Remaining Months	46
Projected Expenditures	\$15,954,263
Total Actual and Projected Expenditures	\$23,852,899

Source: OCA

To date, contract expenditures have been funded approximately 95.2 percent by the City’s General Fund (through the Department of Public Works), approximately 4.6 percent by the SFPUC Water Enterprise operating funds, and approximately 0.2 percent by Port operating funds.

**POLICY CONSIDERATION**

**Price Fluctuation**

As a petroleum-based product, asphalt prices may fluctuate dramatically. In 2022, the PPI value for asphalt increased from 251.267 in January to a high of 425.062 in July, and then decreased to 189.218 in December.<sup>4</sup> Under the contract, Granite Rock Company’s prices may be increased or decreased once per year based on the PPI. Therefore, pricing may be locked in at levels significantly higher or lower than annual averages based on the timing of the PPI adjustment. The contract pricing may be adjusted next in June 2023.

**Low Number of Bidders**

The Budget & Legislative Analyst reviewed seven contracts for goods, commodities, and non-technology services procured or amended by Office of Contract Administration in 2022 and found that each had an average of two bids. Consistent with the Administrative Code, at times, the City has relied on the procurement process of other public agencies, Tucson, AZ and Sourcewell (a Minnesota governmental entity), to contract with vendors for goods. Two such agreements

<sup>3</sup> Actual expenditures for the first half of FY 2022-23 total \$4,636,687. Projecting forward, OCA estimates that expenditures for the full fiscal year will be \$9,273,374. When combined with expenditure amounts from FY 2020-21 and FY 2021-22, the average annual expenditure amount is \$4,161,982, and the average monthly amount is \$346,832.

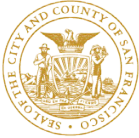
<sup>4</sup> Source: Bureau of Labor Statistics, <https://beta.bls.gov/dataViewer/view/timeseries/PCU3241103241109>

approved by the Board of Supervisors in 2022 had an average of eight bidders. Increasing the number of bidders in response to a solicitation often results in lower costs.

In response to requests from Supervisor Mandelman, the Office of Contract Administration and City Administrator's Office are reviewing the impact of Administrative Code Chapter 12X (which prohibits travel and contracting with vendors based in states that have discriminatory practices) and procurement of low-value contracts. In addition, the Office of Contract Administration, City Administrator's Office, and Controller's Office are reviewing existing business processes to improve contracting timelines. While considering these efforts, the Board of Supervisors should request a report from the Purchaser and City Administrator by June 2023 that: (1) assesses existing procurement strategies and municipal code requirements, (2) evaluates the feasibility of partnering with other governments to increase the number of joint procurements that the City participates in, and (3) provides recommendations to increase the number of bidders for goods, commodities, and services.

## RECOMMENDATIONS

1. Approve the proposed resolution.
2. Request a report from the Purchaser and City Administrator by June 2023 that: (1) assesses existing procurement strategies and municipal code requirements, (2) evaluates the feasibility of partnering with other governments to increase the number of joint procurements that the City participates in, and (3) provides recommendations to increase the number of bidders for goods, commodities, and services.



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

# **Petroleum, Emulsions, Sealants, and Concrete Base Contract (TC 75955)**

*File 23-00039*

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Office of Contract Administration

Board of Supervisors' Budget and Finance Committee  
February 8, 2023



# Contract Summary

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- **Covered Goods:** Petroleum, emulsions, sealants, and concrete base.
- **Purpose:** Critical as part of maintaining the City's infrastructure to ensure safe, paved streets for transportation needs of pedestrians, cyclists, motorists in San Francisco.
- **Contractor:** Awarded to Granite Rock Company through a an Invitation for Bids by OCA in November 2019.
- **Initial contract NTE:** \$7,687,850, November 1, 2019 to October 31, 2022. Not-to-Exceed (NTE) amount based on City's then-estimated usage for 3 years.
- **Primary User Department:** DPW with a 2 year total of \$7,472,973. Other users, PUC and PORT.

# Amendment 1

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- Increased NTE to \$9,900,000 and extended contract by 2 years through December 31, 2024.
- Allowed for a price increase of 47.60% based on producer price index (PPI).
- Given significant price increase, extensions was limited to 2 years to determine if a new bid would secure better pricing.
- Calculations based on City's usage rate as of June 2022 which did not yet account for the future impact of 47.60% price increase.

Estimated Need Based on Data Available as of June 2022*	
Avg Monthly Spend	\$ 178,476
Total Remaining Months Until Contract End Date of October 31, 2024	28
Total Needed for Remaining Months	\$ 4,997,332
Less Current Contract Balance	\$ 2,693,842
Total Needed Increase to NTE	\$ 2,303,490
Current NTE	\$ 7,687,850
Revised NTE	\$ 9,991,340

\* Not adjusted for the impact of a 47.60% price increase.

# Amendment 2

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- OCA has determined it is in the City's best interest to continue with the existing contract and postpone a new solicitation until the market has stabilized.
- Will increase NTE to \$23,889,728 and extend contract through December 31, 2026 (2 years beyond Amendment 1).
- Calculations based on City's actual usage rate as of December 2022, which now takes into account impact of 47.60% price increase.

Estimated Need Based on Data Available as of December 2022	
Avg Monthly Spend	\$ 346,832
Total Remaining Months Until Contract End Date of October 31, 2026	46
Total Needed for Remaining Months	\$ 15,954,263
Less Current Contract Balance	\$ 1,964,535
Total Needed Increase to NTE	\$ 13,989,728
Current NTE	\$ 9,900,000
Revised NTE	\$ 23,889,728

# Recommendation

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Based on actual, as well as projected expenditures, recommend approval of the resolution to amend contract allowing:

- Increase of NTE by \$13,989,728 for a total not-to-exceed amount of \$23,889,728.
- Extend by two years to October 31, 2026.

**Thank You**



## Contract Modification 2

### Petroleum Emulsions Sealants and Concrete Base

**Granite Rock Company**

Donita Granado

PO Box 50001

Watsonville, CA 94105

Supplier e-mail: [dgranado@Graniterock.com](mailto:dgranado@Graniterock.com)

Date: January xx, 2023

Buyer Name: Carissa Wu

Term contract: 75955

Contract ID: 1000016483

Supplier ID: 0000019307

Type: Indefinite Quantity

Not-to-exceed amount: **\$23,889,728**

The history of this contract and its modifications is as follows:

Modification	Start date	End date	Amount
Original contract	11/1/2019	10/31/2022	\$7,687,850
1	No change	10/31/2024	\$9,900,000
2	No change	10/31/2026	\$23,889,728

This Modification No. 2 changes the contract as follows:

- 1) Extends the contract by two (2) years through to an end date of October 31, 2026;
- 2) Increases NTE amount from \$9,900,000 to \$23,889,728;

All other terms and conditions remain the same.

**CITY**

**Granite Rock Company**

Recommended by:

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Mark Farley  
Supervising Purchaser  
Office of Contract Administration

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Donita Granado  
Material Sales Lead  
PO Box 50001  
Watsonville, CA 94105

City Supplier Number: 0000019307

Approved:

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

City and County of San Francisco  
Office of Contract Administration  
Purchasing Department  
1 Dr. Carlton B. Goodlett Place, Room 430  
San Francisco, CA 94102-4685



## Contract Award

### Petroleum Emulsions Sealants and Concrete Base

Supplier: Granite Rock Company  
Supplier ID: 0000019307  
Stuart Mager  
350 Technology Dr  
Watsonville, CA 95076  
smager@graniterock.com

Date: November 6, 2019  
Buyer: Omar Sanchez  
Term Contract: 75955  
Contract ID: 1000016483  
Type: Infinite Quantities  
Not-to-Exceed Amount: \$7,687,850.00

The City and County of San Francisco hereby accepts your offer to provide the following:

### Petroleum Emulsions Sealants and Concrete Base

Term: **November 1, 2019 through October 31, 2022**

Aggregate/Items: Line Items 1-13

Payment Terms: N30

In case of any conflict between the City's documents and the contractor's documents, the City's documents shall prevail.

#### Approved by the City:

DocuSigned by:  
*Moayed, Taraneh*  
-----  
3AE44094D514E7...  
Moayed, Taraneh  
Assistant Director

#### Approved by the Contractor:

DocuSigned by:  
*Stuart Mager*  
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E29B3A704CB04F1...  
Stuart Mager  
Authorized Representative



City and County of San Francisco  
Office of Contract Administration  
Purchasing Department  
1 Dr. Carlton B. Goodlett Place, Room 430  
San Francisco, CA 94102-4685



**COMPANY INFORMATION**

**WARNING**  
City Staff: Do not use any term contracts to purchase goods and/or services when using Federal, State or Special Funds. Term contracts may contain provisions that conflict with Federal or State provisions. City departments must contact their assigned City Attorney for applicable provisions, procedures and relevant fund requirements.

Name of Company: Granite Rock Company  
Address: 350 Technology Dr Watsonville  
City, State, Zip: Watsonville, CA, 95076  
Contact: Stuart Mager  
Telephone Number: 650-869-3300  
Fax Number: 650-869-3301  
24-Hour Emergency Number: 650-869-3300  
Email: smager@graniterock.com  
Payment Terms: N30  
Federal Tax I.D. Number: 94-0519560  
PeopleSoft Supplier ID: 0000019307  
PeopleSoft Contract ID: 1000016483

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 Purchasing Department  
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## Award Sheet

Item No.	Description	Unit of Measure	Estimated Quantity	Unit Price
1.	<p><b>ASPHALT, PETROLEUM EMULSIFIED, RS-1 Quick setting grade 5 gallon pail</b></p> <p>Picked up in City truck</p> <p>Location of plant may be taken into consideration in making award</p> <p>Location of Contractor's Bunker:</p>	GL	10,000	<b>\$ 6.81</b>
2.	<p><b>Asphalt, Petroleum Emulsified, SS-1 Quick Setting Grade 5 Gallon Pail</b></p> <p>Picked up in City truck</p> <p>Location of plant may be taken into consideration in making award</p> <p>Location of Contractor's Bunker:</p>	GL	10,000	<b>\$ 5.15</b>

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<p>3.</p>	<p><b>ASPHALT, PETROLEUM EMULSIFIED, TYPE SS-1 Quick setting grade</b></p> <p>Picked up in City small portable trailers</p> <p>Location of plant may be taken into consideration in making award</p> <p>F.O.B. Origin Contractor's Bunker</p> <p>Location of Contractor's Bunker:</p>	<p>GL</p>	<p>28,000</p>	<p><b>\$ 5.15</b></p>
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4.	<p><b>ASPHALT, PETROLEUM EMULSIFIED, TYPE SS-1 Quick setting grade</b>  <b>55 gallon</b>  <b>250 tank</b></p> <ul style="list-style-type: none"> <li>• Vendor must provide initial 250 gal. container</li> <li>• Vendor must fill containers at City's Asphalt Plant  160 Napoleon Street  San Francisco, CA</li> </ul> <p>Deliver to Asphalt Plant  160 Napoleon Street  San Francisco, CA</p> <p>F.O.B. Destination  Freight prepaid and allowed</p> <p>Tanker-load deliveries</p> <p><b>DELIVERY CHARGE:</b></p>	GL	28,000	\$ 5.15
5.	<p><b>ASPHALT, SEALANT,</b>  Single component, hot applied,  Elastically modified asphalt  Composition.  Crafco and polyflex types  1, 2, 3; or equal.  Packed in 30 lb bags/boxes,  which  contain a non-adherent film.  Then,  palletized with weather-proof  covering.</p> <p>Deliver to Asphalt Plant  160 Napoleon Street  San Francisco, CA</p> <p>F.O.B. Destination</p>	LB	5,000	\$ 1.17

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 Purchasing Department  
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	<b>DELIVERY CHARGE:</b>	EA		
6.	<p><b>ASPHALT, PETROLEUM COLD, MIX</b>                  Approximately 94% aggregate, 6% asphalt, aggregate to contain 50% top sand, asphalt to be Slow Cure (SC) #3</p> <p>Picked up in City truck</p> <p>Location of plant may be taken into consideration in making award</p> <p>F.O.B. Original Contractor's Bunker</p> <p>Location of Contractor's Bunker:</p> <p>Deliver to Asphalt Plant                  160 Napoleon Street                  San Francisco, CA</p> <p><b>DELIVERY CHARGE:</b></p>	TN	2,000	<b>\$125.00</b>
		EA		

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7.	<b>ASPHALT, CONCRETE  BASE 1", Marshall Mix with  PG 64-16  BITUMEN OIL</b>  Picked up in City Truck  Location of plant may be taken into consideration in making award  F.O.B. Origin Contractor's Bunker  Location of Contractor's Bunker:  <b>DELIVERY CHARGE:</b>	TN          EA	4,000	\$ 86.10
8.	<b>ASPHALT, CONCRETE  BASE 3/4" with PG 64-16  BITUMEN OIL</b>  Picked up in City truck  Location of plant may be taken into consideration in making award  F.O.B. Origin Contractor's Bunker  Location of Contractor's Bunker:  <b>DELIVERY CHARGE:</b>	TN          EA	30,000	\$ 85.00
9.	<b>ASPHALT, CONCRETE</b>	TN	30,000	\$ 85.00

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	<p><b>TOP 1/2", with PG 64-10 BITUMEN OIL</b></p> <p>Picked up in City truck</p> <p>Location of plant may be taken into consideration in making award</p> <p>F.O.B. Origin Contractor's Bunker</p> <p>Location of Contractor's Bunker:</p> <hr/> <p><b>Delivery Charge:</b></p>	EA		
10.	<p><b>ASPHALT, CONCRETE TOP 3/8", with PG 64-10 BITUMEN OIL</b></p> <p>Picked up in City truck.</p> <p>Location of plant may be taken into consideration in making award</p> <p>F.O.B. Origin Contractor's Bunker</p> <p>Location of Contractor's Bunker:</p> <hr/> <p><b>Delivery Charge:</b></p>	TN	10,000	\$ 93.50
		EA		

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11.	<b>ASPHALT, CONCRETE TOP 1/4", with PG 64-10 BITUMEN OIL</b>  Picked up in City truck  Location of plant may be taken into consideration in making award  F.O.B. Origin Contractor's Bunker  Location of Contractor's Bunker:  _____ <b>Delivery Charge:</b>	TN        EA	5,000	<b>\$ 93.50</b>
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12.	<p><b>ASPHALT, CONCRETE FINE TOP, SHEET with PG 64-10 BITUMEN OIL</b></p> <p>Picked up in City truck</p> <p>Location of plant may be taken into consideration in making award</p> <p>F.O.B. Origin Contractor's Bunker</p> <p>Location of Contractor's Bunker:</p> <hr/> <p><b>Delivery Charge:</b></p>	<p>TN</p>          <p>EA</p>	1,000	\$ 95.50
13.	<ul style="list-style-type: none"> <li>• <b>Plant Opening Charge: Weeknights and Saturdays Based on 8 hour shift \$ 2,300</b></li>   <li>• <b>Plant Opening Charge: Sunday &amp; Holidays Based on 8 hour shift \$ 3,800</b></li>   <li>• <b>Plant Overtime Per hour after 8 hours \$ 330.00</b></li> </ul>			

**CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF CONTRACT ADMINISTRATION  
PURCHASING DIVISION**

**TC75955**

**Petroleum Emulsions Sealants and Concrete Base  
For the Term November 1, 2019 through October 31, 2022**

**BID AND CONTRACT CONDITIONS**

**Getting paid for goods and/or services from the City:**

1. All City suppliers receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments.
2. Electronic payments are processed every business day and are safe and secure.
3. To sign up for electronic payments, visit <https://sfcitypartner.sfgov.org/>.
4. The following information is required to sign up:
  - a. The enroller must be their company's authorized financial representative,
  - b. The company's legal name, main telephone number and all physical and remittance addresses used by the company,
  - c. The company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor),
  - d. The company's bank account information, including routing and account numbers.

If you have questions, please email: [sfcitypartner@sfgov.org](mailto:sfcitypartner@sfgov.org)

**Terms Related To Bidding**

- 1. When Bids Are Due; Bid Opening Procedures.** Bids must be submitted before the time set for bid opening. Bids will be opened by Purchasing at the hour and place stated in the solicitation documents and in the presence of bidders who attend, and bid prices will be read upon request as time permits. Bidders may inspect the bids after award.
- 2. Alternates.** When the name of a manufacturer, brand or make, with or without model number, is used in describing any item in this document, bids for similar articles will be considered unless otherwise stated. Purchasing shall be the sole judge as to whether such alternate articles are acceptable. Unless bidder states to the contrary, articles offered will be assumed to be the specific articles named in this document. If not offering the specific article named, bidder should enclose with its bid full information, specifications and descriptive data on items offered. Purchasing reserves the right to permit deviations from the specifications if any article offered is substantially in accord with Purchasing's specifications and is deemed by Purchasing to be of as good quality and as fully satisfactory for its intended use. Bidder is responsible for identifying any deviations from Purchasing's specifications.
- 3. Articles Furnished.** Articles and services must comply with applicable laws, ordinances and other legal requirements, including (among others) the Cal-OSHA regulations in Title 8 of the Code of Regulations and, for electrical products, Sections 110.2 and 110.3 (B) of the S.F. Electrical Code. In

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addition, if an electrical item has not been tested by a lab approved by City's Department of Building Inspection (DBI) or Department of Public Works (DPW), Contractor shall notify the requesting department before delivery by writing the department at the "Deliver to" address on the front of the Purchase Order. When a non-tested item is delivered, the department will request approval from DPW. If the department is unable to obtain approval, City reserves the right to cancel the transaction and return the item to Contractor, at no charge to City.

- 4. Place of Manufacture.** No article furnished shall have been made in prison or by convict labor, except, for articles purchased for use by City's detention facilities.
- 5. Condition of Article.** Articles offered and furnished must be new and previously unused, and of manufacturer's latest model, unless otherwise specified herein.
- 6. Samples.** Articles offered as equal to "City sample" must fully conform thereto; "City samples" may be inspected at the place designated by Purchasing. Samples must be furnished as required in this document. Those submitted by successful bidders may be retained for testing or checked against deliveries, in which case allowance will be made to Contractor. Each sample shall be plainly marked in a durable manner with the name of the bidder, the contract proposal number, and the item number. Submitted sample will be deemed to be exactly what bidder proposes to furnish unless otherwise clearly indicated by the bidder in writing with the submittal of the sample. Sufficiency of sample will be determined by Purchasing. Do not enclose sample with bid, and do not wrap bid in package with sample.
- 7. FOB Point.** F.O.B. destination in San Francisco, and other locations as required by the City, freight prepaid and allowed.
- 8. Price List Discounts.** When bids are based on prices from a catalog or price list, bidder shall furnish copies of the catalog or price list in the format requested herein. Contractor shall furnish additional lists as required. Bids will be considered for price lists offered other than specified provided the alternate price list can be readily compared on an overall basis with the specified price list. Bidder's price list discounts must remain firm during the term of the contract.
- 9. Bidding in the Aggregate.** Bidders must bid on all line items.
- 10. Prices.** Prices quoted must be fixed except as otherwise specified in this document. Any bid requiring receipt of order in less than 30 days will be unacceptable unless otherwise specified herein.
- 11. Awards; Rejection of Bids.** Purchasing may make awards on one, some or all items in a bid. Purchasing reserves the right to reject any and all bids.

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**12. Cash Discounts; Terms of Payment (Commodities and Equipment only).** Cash discount (discount for prompt payment) will be taken into consideration in determining the low bid under the following conditions:

- Discount period must be at least 30 days. Example: “1%, 30 days. Net 31.”
- The maximum cash payment discount that will be considered when determining the lowest bid will be 2%.
- The discount period will start upon date of completion or delivery of all items on any Purchase Order or other authorization certified by Controller, or upon date of receipt of properly prepared invoices covering such deliveries, whichever is later.
- Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing the City’s check or the date of direct deposit into supplier’s bank account.

Whether or not the discount is taken into consideration in determining the low bid, it will be deducted from the invoice amount in accordance with the provisions above, unless otherwise provided by bidder. No additional charge shall accrue against City in the event that City does not make payment within any time specified by bidder.

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

**Terms Related to the Contract**

**14. Inspection.** All articles supplied shall be subject to inspection and rejection by Purchasing or any department official responsible for inspection.

**15. Contract Interpretation; Choice of Law/Venue; Assignment.** Should any questions arise as to the meaning and intent of the contract, the matter shall be referred to Purchasing, who shall decide the true meaning and intent of the contract. This contract shall be deemed to be made in, and shall be construed in accordance with the laws of, the State of California; the venue for all claims arising out of this contract shall be in San Francisco. This contract may be assigned only with the written approval of Purchasing.

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**16. Hold Harmless and 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 Contract, including but not limited to, the use of Contractor's facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Contract, 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 attorney's fees, court costs and all other litigation expenses for any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequences of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Contract.

**17. Failure to Deliver.** If Contractor fails to deliver an article and/or service of the quality, in the manner or within the time called for by this contract, such article and/or service may be bought from any source by Purchasing and if a greater price than the contract price be paid, the excess price will be charged to and collected from Contractor or sureties on its bond if bond has been required.

**18. Budget and Fiscal Provisions.** This Contract is subject to the budget and fiscal provisions of 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 Contract 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 Contract 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 Contract 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 Contract.

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**19. Default; Remedies.** 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 Contract or to seek specific performance of all or any part of this Contract. 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 Contract or any other contract 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 Contract or any other contract. All remedies provided for in this Contract 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.

**20. Termination for Convenience.** 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. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City.

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

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**22. Taxes.** Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Contract, or the services delivered pursuant hereto, shall be the obligation of Contractor. Contractor recognizes and understands that this Contract may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Contract 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:

A. 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.

B. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extensions, renewal, or assignment of this Contract may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest by this Contract. 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.

C. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events 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.

D. 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.

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

**24. 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

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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 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. The entire San Francisco Administrative Code is available on the web at a site maintained by American Legal Publishing Corporation.

**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 Contract Monitoring Division (formerly San Francisco Human Rights Commission).

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

**25. 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



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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. Enforcement.** If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor’s net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City’s Contract Monitoring Division (CMD) 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.

**26. 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.

**27. Tropical Hardwood and Virgin Redwood Ban.** The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as expressly permitted by the

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application of Sections 802(B), 803(B), and 804(B) of the Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of Contractor to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

**28. Resource Conservation.** Contractor agrees to comply fully with the provisions of Chapter 5 of the San Francisco Environment Code (“Resource Conservation”), as amended from time to time. Said provisions are incorporated herein by reference

**29. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at a site maintained by American Legal Publishing Corporation. 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.

**30. Liability of City.** CITY’S PAYMENT OBLIGATIONS UNDER THIS CONTRACT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR UNDER THIS CONTRACT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, 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 CONTRACT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS CONTRACT.

**31. 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 Contract.

**32. 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

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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 Contract 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 Contract 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 Contract.

**33. 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 Contract, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**34. Bid Protests.** Bid protests for purchases of Commodities shall be submitted and responded to in accordance with Rules and Regulations 21.3(i) pertaining to the San Francisco Administrative Code, Chapter 21.

**35. 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.

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These terms and conditions supplement the City's Bid and Contract Conditions. In the event of a conflict between these conditions and the preceding Bid and Contract Conditions, these conditions take precedence.

**36. Contract Term.** The contract period shall be for approximately thirty-six (36) months through to an end date of September 30, 2022.

**37. Contract Extension.** This contract may be extended, all or in part, for a period or periods up to one year by mutual agreement in writing. The maximum contract period shall not be more than 7 years.

**38. Toll-Free Telephone Number.** A contractor located outside of San Francisco is encouraged to provide free telephone services for placing orders. This requirement can be met by providing a toll-free telephone number or accepting collect calls.

**39. Cooperative Agreement.** Contractor agrees \_\_\_\_\_ or does not agree \_\_\_\_\_ (make a selection by an "X" mark) that during the term of this agreement and any authorized extension, the Director of Purchasing may allow other public agencies or non-profits made up of multiple public agencies to utilize this agreement to obtain some or all of the services and/or commodities to be provided by Contractor under the same terms and conditions as the City, pursuant to a Board of Supervisor Resolution.

**40. Not used**

**41. LBE Ordinance.** To qualify for a bid discount under the provisions of Administrative Code Chapter 14B, an LBE must be certified by the Contracts Monitoring Division (formerly 'Human Rights Commission') by the Bid Due date. The certification application is available from CMD (415) 581-2310, and on the web. CMD's home page is:

<http://sfgov.org/cmd/>

Click on the "14B Local Business Enterprise Ordinance" tab.

**42. Claim for Preference.** To claim preference under the LBE Ordinance, see Bid Questionnaire.

If Bidder is claiming LBE preference as a supplier, it must comply with Administrative Code Chapter 14B Rules and Regulations VI D - Criteria for Suppliers (2):

"2) *A supplier must have a direct relationship with manufacturers for the materials, equipment, and supplies for which they seek certification, demonstrating that:*

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- a) *The supplier has an agreement with the manufacturer authorizing the supplier to distribute their products.*
- b) *The supplier is able to provide a manufacturer's warranty."*

To comply, at the time of the bid, bidders must include proof of the required relationships as an authorized dealer. Failure to provide adequate proof may result in a nonresponsive determination.

**43. LBE bid discount; brokerage services.**

Pursuant to Section 14B.7 of the Administrative Code, a bid discount will only be awarded to an LBE directly responsible for providing materials, equipment, supplies or services to the City as required by the Bid solicitation. An LBE will be deemed to be directly responsible for providing the required commodity or service only if it regularly does business as a manufacturer, or authorized manufacturer's representative, dealer or distributor, stocking distributor, franchisee, licensee, service provider, or has another direct agency relationship with the manufacturer or provider of the solicited commodity or service, and has been so certified by the Contracts Monitoring Division. An LBE will be considered to be "regularly doing business", as that term is used in the foregoing paragraph, if in the normal course of business, it stocks, warehouses or distributes commodities to businesses or entities other than public entities having a local business preference program. Such a determination will be subject to audit by CMD. No preference will be given to an LBE engaging in brokerage, referral or temporary employment services not meeting this definition, unless those services are required and specifically requested by the department.

**44. LBE Subcontracting.**

**A. Subcontracting to LBEs.** Bidder is encouraged to make good faith efforts to award subcontracts to City and County of San Francisco-certified LBEs. This can be achieved through subcontracting, sub-consulting or supply opportunities. With the bid, the bidder is encouraged to provide a description of the type of good faith efforts the bidder estimates it may make under the contract.

**B. Examples of Good Faith Efforts.** "Good Faith Efforts" include but are not limited to the following:

- (1) Identifying and selecting specific products or services which can be subcontracted to certified LBEs.
- (2) Providing written notice to potential LBE subcontractors that Bidder will be bidding on this Contract and will be seeking subcontractors.

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(3) Advertising in one or more daily or weekly newspapers, trade association publications, trade oriented publications, trade journals, or other media specified by the City, for LBEs that are interested in participating in the project.

(4) Following up on initial notices the Contractor sent to LBEs by contacting the LBEs to determine whether they were interested in performing specific parts of the project.

(5) Providing interested LBEs with information about the scope of work.

(6) Negotiating in good faith with the LBEs, and not unjustifiably rejecting as unsatisfactory proposals prepared by any LBEs, as determined by the City.

(7) Where applicable, advising and making efforts to assist interested LBEs in obtaining insurance required by the City and the prime contractor.

(8) Making efforts to obtain LBE participation that the City could reasonably expect would produce a level of participation sufficient to meet the City's goals and requirements.

**C. Examples of Subcontracting.** The following are examples of products which could be subcontracted under this Contract. The list is not intended to be exhaustive:

(1) the products or services which the supplier in turn sells to the City, or components of those products; (see Page 1 of the bid sheet);

(2) packing containers and materials used to ship the City's order;

(3) services of the carrier who delivers the City's orders;

(4) Pro rata share of LBE spending which is part of the suppliers' general and administrative expenses, if the supplier can show that the pro rata share can be reasonably allocated to this contract.

**D. Reports.** On a quarterly (January 1 – March 31, April 1 – June 30, July 1 – September 30, October 1 – December 31) basis, the Contractor will provide CMD with reports on LBE subcontracting under this Contract. The report must include a narrative description of the good faith efforts, if any, the Contractor has made during the quarter to provide subcontracting opportunities to LBEs and to meet the percentage goal.

**E. CMD Data on LBEs.** Contractor will obtain from CMD a copy of CMD's database of LBEs, and this or other information from CMD, shall be the basis for determining whether a LBE is confirmed with CMD. Contractor will obtain an updated copy of CMD's database at least **quarterly**. Please call CMD at (415) 581-2310.

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**45. 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.

**46. Conflict of Interest.** Through its execution of this Contract, 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 Contract.

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

**48. Contractor's Default.** If Contractor fails to fulfill its obligations under this contract proposal, whether or not said obligations are specified in this section, purchasing reserves the right to: (a) terminate this contract at no cost to the City; (b) take action in accordance with Sections 17 and 19, or (c) exercise any other legal or equitable remedy.

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

**50. 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 which City may have under applicable law.

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**51. Reports by Contractor.**

**Multi-year Term Contracts**

Each year, no later than February 15; Contractor shall submit a soft copy report of the total items ordered, by month, under this contract during the preceding calendar year (January 1 – December 31). The report must be in a format acceptable to City and must list by department or location the following: (1) all items awarded under this contract; and (2) total quantity and dollar value of each item ordered, including items for which there were no orders. Contractor must also furnish a separate similar report for the total of all items ordered by City which are not part of this Contract, and any usage reports required prior to the extension of a Contract or Contract Modification. Emailed reports must not be larger than **10MB**.

Contractor shall email reports to:

[OCAVendor.Reports@sfgov.org](mailto:OCAVendor.Reports@sfgov.org)

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

Contractor shall mail the reports to:

OCA Supplier Reporting  
Re: Term Contract No. **75955**  
City and County of San Francisco  
Office of Contract Administration – Purchasing  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-468

**52. Notice to Parties.** All notices to be given by the parties hereto shall be in writing, and served by depositing same in the United States Post Office, postage paid and registered as follows:

Director of Purchasing  
City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4685



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- 53. Subcontracting.** Contractor is prohibited from subcontracting the direct supply of commodities under this contract unless such subcontracting is agreed to in writing by Purchasing. No party on the basis of this contract shall in any way contract on behalf of or in the name of the other party of this contract, and violation of this provision shall confer no rights on any party and any action taken shall be void.
- 54. 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 Contract. 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 Contract 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 Contract 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 Contract.
- 55. Severability.** Should the application of any provision of this Contract 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 Contract 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.
- 56. Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service. Contractor will make every good faith effort in attempting to deliver products using all modes of transportation available. Contractor shall provide a 24-hour emergency telephone number of a company representative who is able to receive and process orders for immediate delivery or will call in the event of an emergency. In addition, the Contractor shall charge fair and competitive prices for items and services ordered during an emergency and not covered under the awarded contract.
- 57. Contractors Unable to do Business with the City.**

**A. Generally**

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Contractors that do not comply with laws set forth in San Francisco's Municipal Codes may be unable to enter into a contract with the City. Some of the laws are included in this Contract Proposal, or in the sample terms and conditions attached.

**B. Companies Headquartered in Certain States**

This Contract is subject to the requirements of Administrative Code Chapter 12X, which prohibits the City from entering into contracts with companies headquartered in states with laws that perpetuate discrimination against LGBT populations or where any or all of the work on the contract will be performed in any of those states. Bidders are hereby advised that Bidders which have their United States headquarters in a state on the Covered State List, as that term is defined in Administrative Code Section 12X.3, or where any or all of the work on the contract will be performed in a state on the Covered State List may not enter into contracts with the City. A list of states on the Covered State List is available at the website of the City Administrator.

**58. Term Bid – Quantities.** This is a term, indefinite quantities contract. Unless otherwise specified herein, deliveries will be required in quantities and at times as ordered during the period of the contract. Estimated quantities are approximate only. City, in its sole discretion, may purchase any greater or lesser quantity. Purchasing may make minor purchases of items requested in City's advertisement for bids or contractor's bid from other suppliers when Purchasing determines, in its sole discretion, that the City has an immediate need for such items or that it is not practical to purchase against this contract.

**59. 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,

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participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

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

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

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be non-duplicative, 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.

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(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,

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does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

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

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

b. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

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

**60. 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 <http://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

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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, and shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement.

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 60(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.

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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.

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

**62. 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 contract. 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 contract, 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.

**63. 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

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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.

**64. Not used**

**65. 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.

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

**67. 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.

**END OF GENERAL CONDITIONS**



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The following terms and conditions supplement the City's Bid and Contract Conditions and General Conditions. In the event of a conflict between these conditions and the preceding Bid and Contract Conditions and General Conditions, these conditions take precedence.

**68. Purpose.** The purpose of this contract is to establish a responsive and reliable Contractor to furnish and deliver Asphalt Products to the City. This includes Petroleum, Emulsions, Sealants, and Concrete.

**69. Not Used. Pre-Bid Conference.**

**70. Specifications**

- Contractor shall supply the Asphalt Products including Petroleum, Emulsions, Sealants and Concrete Base as specified on the Bid Sheets.
- Contractor shall supply Asphalt, Grade AR4000, with Sulfur content of less than 0.5%, if available,  
at a temperature of 300 Fahrenheit degrees. Asphalt Products must meet or exceed the Asphalt Institute's current specifications for paving Asphalt.
- All shipments must be marked with the lot number and penetration.
- Contractor must furnish a test report representing each shipment. Such report must be in duplicate  
and forwarded to:

San Francisco Public Works  
Attn: Superintendent, Bureau of Street and Sewer Repair  
2323 Cesar Chavez Street  
San Francisco, CA 94124

- Products must meet guidelines issued by the Bay Air Quality Management District and applicable  
Federal and State Regulations.

**71. Bidder's/Contractors Qualifications and Requirements**

**I. Minimum Qualifications.**

MQ1. In order to receive consideration, Bidder/Contractor must have in-depth technical knowledge and three (3) years of experience within the last five (5) years in the products covered by the contract.

MQ2. Three (3) references of governmental or private clients where Contractor has provided substantially similar items and volumes to this contract, to substantially comparable sized facilities within the last three (3) years of the proposal due date.

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**II. Additional Bidder's Qualifications and Requirements.**

A. Contractor shall have and maintain, throughout the contract term, and any extension thereof, stocking levels of (30%) on all products and articles required by this contract. Failure to maintain adequate stock may result in the Purchaser invoking the Contractor's Default clause (General Condition No. 48) of the contract.

B. Contractor shall be responsible for providing technical support and assistance to the City through Contractor's own personnel, equipment and facilities as well as through manufacturer's technical representatives. As part of this technical support and assistance, the Contractor shall provide personnel with in-depth technical knowledge of the products the Contractor is providing under this contract, to answer questions and offer any assistance required by City personnel, during City business hours (7:00 A.M. – 5:00 P.M.).

C. Contractor shall maintain stock as specified in other sections of this contract and adequate facilities to allow for immediate pick-up of "will-call" orders placed by the City.

D. Contractor shall have a storage warehouse, distribution facility, parking area and will-call counter (for City Department pick-ups) located within San Francisco.

E. Contractor's warehouse facility shall comply with Title III of the Americans with Disabilities Act Regulations (including Title 3 Accessibility Guidelines), and Title 24, State of California Building Code (California Accessibility Regulations) regarding handicapped persons' accessibility.

F. The City may require Contractor to provide within seven (7) working business days from the date they are requested to do so, information and documentation requested by Purchaser, including but not limited to: sources of supply, distribution, dealership or agency agreements and authorizations from manufacturer(s) they claim to represent, lines of credit with financial institutions for manufacturer(s) they claim to represent, lines of credit with financial institutions and suppliers, numbers of employees, trade references and any other information to determine the Contractor's fitness to supply the contract requirements.

G. The City reserves the right to reject any bid on which information submitted by Bidder fails to satisfy the City and/or Bidder is unable to supply information and documentation within the period of time requested. Any false statements made by a bidder in their submitted bid or any related communication/clarification may result in the disqualification of their bid from receiving further evaluation and contract award.

H. The City reserves the right to inspect Contractor's place of business, including Contractor's existing stock prior to award or during the contract term, to aid Purchaser in determining Contractor's ability to satisfy the terms and conditions of the contract.

**CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF CONTRACT ADMINISTRATION  
PURCHASING DIVISION**

**TC75955**

**Petroleum Emulsions Sealants and Concrete Base  
For the Term November 1, 2019 through October 31, 2022**

**SPECIAL CONDITIONS**

I. Contractor must maintain normal business hours of at least 7:00 A.M. to 5:00 P.M., Monday through Friday throughout the term of the contract, and be open at all times during that period.

J. Contractor must be capable of producing usage reports required under General Condition No. 51 of this contract.

K. Contractors asphalt plant must be located within a 10-mile radius of 2323 Cesar Chavez Street, San Francisco, CA. If contractor's plant is located greater than this distance Contractor must provide the City with a credit of \$250 Per Pick-Up per truck for every 25 miles or portion thereof, in excess of the 10-mile radius. This includes any instance where City goes to substitute site due to shutdown of contractor's primary facility.

**72. City Department's Responsibilities**

A. Maintain adequate stock of most commonly used items to minimize emergency orders whenever possible and as applicable to the department's operations.

B. Monitor and document Contractor's performance and furnish Purchaser copies of records, correspondence and all other documentation relevant to Contractor's performance.

C. Inspect material received from Contractor immediately upon delivery and reject or return damaged or incorrect material for replacement at no extra charge or credit.

D. Establish quality control measures, as applicable to department's operations, and provide documented reports to Purchaser and Contractor of any product defects or premature failures.

E. Provide Purchasing with documentation of unsatisfactory performance of the Contractor and receive authorization from Purchasing to place orders with another Contractor.

**73. Delivery**

Contractor must comply with the following delivery requirements. Failure to comply with any or all requirements may result in Purchasing invoking General Condition 48, Contractor's Default Clause.

A. Deliveries shall include all associated delivery/freight charges, F.O.B point of destination.

B. Prior to all deliveries, Contractor shall provide scheduled delivery dates to the ordering department. Any deliveries made without prior scheduling will be rejected by the department with no additional costs incurred.

**CITY AND COUNTY OF SAN FRANCISCO  
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**TC75955**

**Petroleum Emulsions Sealants and Concrete Base  
For the Term November 1, 2019 through October 31, 2022**

**SPECIAL CONDITIONS**

- C. All deliveries shall be made and accepted at the City location indicated by the ordering department between the hours of 7:00 A.M. and 3:00 P.M.
- D. Establish quality control measures, as applicable to department's operations, and provide documented reports to Purchaser and Contractor of any product defects or premature failures.
- E. No substitutions will be allowed.
- F. Emergency deliveries shall be delivered by best means possible, at no additional cost to the City. Contractor shall notify the department of the estimated time of delivery.
- G. Contractor shall notify the ordering department immediately if unable to deliver the items and/or quantity ordered. Contractor must notify and obtain approval from the ordering department prior to delivery of any back-ordered items. Department may reject back-ordered items at no additional costs incurred to the City.
- H. All deliveries must include a packing slip and must provide the following information:
- Complete description including manufacturer's name and part number
  - Quantity ordered
  - Contract number and contract item numbers
  - Back-ordered items and amount back-ordered
  - Date back-ordered items will be delivered
- I. In the event that back-ordered items are delayed in excess of five (5) working days, the City reserves the right to reject partial shipment or cancel the item(s) ordered from the Contract, at no additional cost incurred to the City.
- J. Unless otherwise specified, delivery of all items under this Contract must be made within twenty-four (24) hours after receipt of order from the City Department or as required by the City when placing an order.
- K. Contractor may be **required** to make emergency deliveries prior to the maximum five (5) working days. Emergency deliveries shall be delivered by best means possible, at no additional cost to the City. Contractor shall notify the department of the estimated time of delivery. In some cases, the department will require pick-up at supplier's place of business by City personnel.
- L. Deliveries must be made in insulated truck trailer with a capacity of approximately twenty-five (25) tons, (8.51 lbs. per gallon).

**74. Product Pick-up by City.**

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**Petroleum Emulsions Sealants and Concrete Base  
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**SPECIAL CONDITIONS**

- A. Various items covered under this contract will be picked-up by City personnel using City trucks.
- B. Pick-up preference must be made available to City personnel, to avoid delays. Such preference shall be provided by means of a separate silo or allowing City trucks to proceed to front of line, at the time of pick up.
- C. Contractor is required to load the product on to city vehicles within 15 minutes of placing the order at the contractor’s facility. Failure to do so will result in a credit to the city pursuant to section 77.
- D. Contractor must certify product and weight of product by issuing a certification by the weight master, for all City pick-ups.
- E. Contractor must have all material ready for pick-up within twenty-four (24) hours after receipt of order from the City.
- F. Contractor will be required, throughout the period of this contract to open the asphalt plant for weekend or after-hour weekday pickup of material, including, but not limited, to all types of asphalt concrete. Contractor is required to provide for opening when City gives at least a 48-hour notice. Failure to do so will result in assessment of liquidated damages of \$1,000 for first occurrence, and \$2,000 with each subsequent occurrence.

**75. Inspections and Returns.**

- A. Purchaser may inspect or cause to be inspected, deliveries of any items herein. If the item inspected does not conform to the specifications for such items, the cost of such inspection as determined by Purchaser will be charged to Contractor.
- B. If any item is found unacceptable, the Department will notify Contractor for pick-up of product(s). Contractor shall issue a credit to the Department.

**76. Pallets**

Contractor shall pickup all Contractor-owned empty pallets from the loading dock after each delivery or within twenty-four (24) hours of a call by Department.

**77. Drivers Credit**

If City drivers have to wait more than 15 minutes for material to be loaded into trucks including, but not limited to, all types of asphalt concrete, then the contractor will be required to credit the department based on the current hourly truck driver rate, paid by the City, including overhead. The Current wage of a driver is \$45.60 hourly and will increase 3% every year on the contract’s anniversary date.

**78. Price.** Bid prices are to be firm for the term of the contract, from award date through the end of the term, including extensions. Only prices that appear on City Contract Proposal Bid Sheets will be considered. No other pages with prices or attached price lists and/or catalog prices will be considered.

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**Petroleum Emulsions Sealants and Concrete Base  
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**SPECIAL CONDITIONS**

Bid prices will be inclusive of all costs to the City, including delivery/freight charges, F.O.B. point of destination. Bid prices shall be exclusive of any Federal, State, local sales or use tax. If there is a discrepancy between the Bid Sheet and the PeopleSoft Line Items, the Bid Sheet pricing will prevail. In the event of a discrepancy between the unit price and the extended price, the unit price will prevail.

**79. Price Adjustment**

A. Prices may be increased or decreased commencing on or after the end of the first twelve (12) month contract period and each twelve (12) month period thereafter during the contract term and for any subsequent extensions upon written approval by the Purchaser.

B. Requests for price increases must be made in writing at least 30 days prior to the anniversary date of the contract. If approved, the price changes will be implemented with a contract amendment. No more than one price increase in any given 12-month anniversary period will be approved.

C. Such adjustment shall be equal to the percentage change (increase or decrease) of the base index indicated below, from the Bid Due date to the anniversary date of the Bid Due date. In succeeding years, if valid requests for price changes are received in a timely manner, subsequent price adjustments will be administered with new pricing effective on the anniversary date of the contract.

D. Requests for price increases under this contract must be supported by the following **Producer Price Index (PPI)** as published by the U.S. Department of Labor, Bureau of Labor Statistics:

Commodity Series ID: PCU3241103241109  
Group: Petroleum Refineries-Asphalt  
Item: Asphalt  
Base Data: Petroleum Refineries  
Website: [www.bls.gov/data/](http://www.bls.gov/data/)

E. It shall be Contractor's responsibility to request and to provide documentation satisfactory to the Purchaser to support any increases. Documentation shall include, but is not limited to all applicable product indices and other direct costs to substantiate Contractor's request for price increases.

F. Price increase requests will not be granted retroactively for past years or years in which the Contractor failed to request price increase(s).

**G. Example of Price Adjustment Calculation:**

PPI Group	Contractor's Bid Price	Index on Bid Due Date	Index at 12 Months	Change in Index	Percent Change	Adjusted Price
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**SPECIAL CONDITIONS**

					In Index	
Widgets	\$31.99	190.0	194.4	4.4	2.3%	\$32.73

**(Index at 12 Months) – (Index on Bid Due Date) = Change in Index**

$$194.4 - 190.0 = 4.4$$

**(Change in Index) / (Index on Bid due Date) = Percent Change in Index**

$$4.4/190.0 = .023 \text{ or } 2.3\%$$

**(Percent Change in Index x Contractor's Bid Price) + Contractor's Bid Price = Adjusted Price**

$$(.023 \times 31.99) + 31.99 = \underline{\$32.73 \text{ Adjusted Price}}$$

**80. Bid Evaluation.** Except as otherwise noted on Bid Sheets, bid prices will be evaluated for each item based on the estimated quantity times the bid price per specified unit, less applicable discount payment terms offered (see Bid and Contract Condition 12), less any applicable LBE preference (see General Conditions 41 through 43) and applicable sales tax adjustment (see Special Condition 81). Purchasing will attempt to evaluate this ("bid package" or "contract proposal" package) within thirty (30) days after receipt of bids(s). If Purchasing requires additional evaluation time, all bidders will be notified in writing of the new expected award date. If there is a discrepancy between the Bid Sheet and the People Soft Line Items, the Bid Sheet pricing will prevail. In the event of a discrepancy between the unit price and the extended price, the unit price will prevail.

**81. Adjustment of Bid Price for Sales Tax.** In accordance with Administrative Code Chapter 21.32, for bid purposes, Purchasing will reduce your bid based on any sales tax revenue the City would receive from this purchase.

**82. Award.** Award will be made to the lowest priced, most responsive and responsible bidder by the aggregate as noted on the bid sheets. Bidder must bid on all items in the Bid Sheets; failure to do so will result in a rejected bid.

In determining the award, Purchasing will take into consideration, but will not be limited to:

- Price (evaluated)
- Satisfactory review of bidders' qualifications.
- Any other factors deemed pertinent

**83. Awarded Items.** If during the term of the contract, a contract item is determined to be unacceptable for a particular use, and such is documented by a City Department and as determined by Purchasing, it is understood and agreed that the item will be canceled and removed from the contract without penalty to the City. The City's sole obligation to the supplier is payment of deliveries made prior to the cancellation date. City shall give the supplier ten days' notice prior to any cancellation.

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**SPECIAL CONDITIONS**

The City will purchase the required replacement item from any source and in the manner as determined by Purchasing. If a contracted item has been discontinued by the manufacturer or is deemed temporarily unavailable, it will be the responsibility of the Contractor to search the marketplace and find an acceptable equal substitute in the time required for delivery and at the contract price. Contractor must notify Purchasing by certified mail, 30 days in advance of any changes in the description of article, brand, product code or packaging. Any changes made without the approval of Purchasing will constitute default and result in the City invoking General Condition No. 19.

**84. Ordering.** Items to be furnished under this contract shall be ordered through a release from the appropriate citywide contract by City departments during the effective period of the contract. All invoices for payments shall show the citywide contract number, complete description of item, quantity and contract price.

**85. Payment.** The City agrees to pay for all products in accordance with the prices quoted in the successful bid and subject to any applicable discount provisions contained in said bid. Payments shall be made by the City to Contractor in arrears, for **completed orders**, throughout the term of the contract. Invoices submitted by the Contractor must be in a form acceptable to Purchasing and Controller. All amounts paid by the City to the Contractor shall be subject to the audit by the City.

**86. Additional Items.** If, in the satisfaction of governmental interests it is necessary to purchase additional items from Contractor, additional items may be added to this contract by mutual agreement of the parties. The aggregated cost of all additional items added to the contract, during the contract term, shall not exceed twenty percent (20%) of the total estimated value (cost) of the original contract. All requests to add additional items to the contract must be submitted by City Departments in writing to the Purchasing Division. All requests must include complete specifications, estimated quantities for the remainder of the contract period and a price quotation provided by the contractor, for each service. All additional items or services added to the contract shall be approved through issuance of a contract modification. In the event the aggregated cost of the contract increases by more than 20% of the total estimated value of the original contract, or the increase totals more than the Minimum Competitive Amount, the amount over 20% or the Minimum Competitive Amount, shall be bid in accordance with Standard Purchasing Procedures. The resulting bid award shall be added to the contract through a contract modification (same Contractor) or the issuance of a new contract (new Contractor) and include Contractor's name and information, complete service description, delivery information and pricing information.

**87. Environment Code Chapter 5, Resource Conservation Ordinance.** (Not Applicable)

**88. Bid Security.** (Not Applicable)

**89. Performance Bond.** (Not Applicable)

**90. Fidelity Bond.** (Not Applicable)



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**TC75955**

**Petroleum Emulsions Sealants and Concrete Base  
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**SPECIAL CONDITIONS**

**91. Insurance** Prior to award, the successful bidder or bidders will be required to furnish evidence of insurance as follows:

**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, \$2,000,000 aggregate for bodily injury, property damage, contractual liability, personal injury, products and completed operations.

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

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

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

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

**C.** Contractor shall provide thirty (30) days’ advance written notice to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days’ notice shall be provided to City. Notices shall be sent to:

Director, Office of Contract Administration  
Purchasing Division  
City and County of San Francisco  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4685

**D.** Contractor hereby agrees to waive Workers’ Compensation subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The

**CITY AND COUNTY OF SAN FRANCISCO  
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PURCHASING DIVISION**

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**SPECIAL CONDITIONS**

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

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

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

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

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

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

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

**92. Failure to Execute Contract.** Within ten business days of the receipt of a notice of award, the bidder to whom the contract is awarded shall deliver the required bond documents and/or specified insurance certificates to City. If the bidder fails or refuses to furnish the required bond and/or insurance within ten days after receiving notice from Purchasing, Purchasing may, at its option, determine that this bidder has abandoned its bid. Thereupon the tentative award of said contract to this bidder shall be canceled and City shall notify the bidder's surety and collect on the bidder's bond (or the check accompanying its bid shall be deposited with the Treasurer of the City and County of San Francisco for collection) and the proceeds thereof shall be retained by City as partial liquidated damages for failure of such bidder to properly file the bonds and insurance herein required. The

**CITY AND COUNTY OF SAN FRANCISCO  
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**TC75955**

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**SPECIAL CONDITIONS**

foregoing in no way limits the damages which are recoverable by City whether or not defined elsewhere in the contract documents.

**93. Sweatfree Procurement.** (Not Applicable)

**94. Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.

**95. Questions.** Any questions, objections, or clarifications concerning the scope of services/specifications or requirements in this bid proposal must be submitted in writing, and emailed to [omar.sanchez@sfgov.org](mailto:omar.sanchez@sfgov.org) and received no later than **August 30, 2019 by 2 p.m. PST** (Pacific Standard Time). All Bidder questions concerning the bid process shall be submitted no later than 24 hours prior to the bid deadline. Bidders who fail to do so will waive all further rights to protest, based on these specifications and conditions.

**96. Bid Submittal Instructions.** Bids **must** be submitted electronically before the due time, via the City's PeopleSoft Supplier Portal: <https://sfsupplierportal.sfgov.org/psp/supplier/SUPPLIER/ERP/h/?tab=DEFAULT> . Bids transmitted by fax, in person, or any type of electronic mail will not be accepted.

This bid opportunity has Event ID No. 0000002701, OCA TC 75955 Asphalt Products: Petroleum, Emulsions, Sealants, and Concrete Base

- A. Upload all required Bid documents via the Supplier Portal:
  - I. Page 1 of the Contract Proposal completed and signed.
  - II. Response to Contract Proposal General Condition 39 "Cooperative Agreement."
  - III. Response to Contract Proposal General Condition 57 "Contractors Unable to do Business with the City."
  - IV. All questionnaires and forms, completed and signed, including signed bid addenda if applicable.
  - V. First Source Hiring Plan Form
  - VI. Three (3) verifiable references

**To receive full consideration, your bid should be unqualified and unconditional.**

FOR MORE INFORMATION, call:

Omar Sanchez, Assistant Purchaser

(415)695-2123

**END OF SPECIAL CONDITIONS**

**CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF CONTRACT ADMINISTRATION  
PURCHASING DIVISION**

**TC75955**

**Petroleum Emulsions Sealants and Concrete Base  
For the Term November 1, 2019 through October 31, 2022**

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**APPENDIX A - SPECIFICATIONS**

- Contractor shall supply the Asphalt Products including Petroleum, Emulsions, Sealants and Concrete Base as specified on the Bid Sheets.
- Contractor shall supply Asphalt, Grade AR4000, with Sulfur content of less than 0.5%, if available, at a temperature of 300 Fahrenheit degrees. Asphalt Products must meet or exceed the Asphalt Institute's current specifications for paving Asphalt.
- All shipments must be marked with the lot number and penetration.
- Contractor must furnish a test report representing each shipment. Such report must be in duplicate and forwarded to:

San Francisco Public Works  
Attn: Superintendent, Bureau of Street and Sewer Repair  
2323 Cesar Chavez Street  
San Francisco, CA 94124

Products must meet guidelines issued by the Bay Air Quality Management District and applicable Federal and State Regulations.

**City and County of San Francisco**  
London N. Breed, Mayor



**Office of the City Administrator**  
Carmen Chu, City Administrator  
Sailaja Kurella, Director  
Office of Contract Administration/Purchasing

# Contract Modification 1

## Petroleum Emulsions Sealants and Concrete Base

**Granite Rock Company**

Donita Granado  
PO Box 50001  
Watsonville, CA 94105  
Supplier e-mail: [dgranado@Graniterock.com](mailto:dgranado@Graniterock.com)

Date: June 10, 2022  
Buyer Name: Carissa Wu  
Term contract: 75955  
Contract ID: 1000016483  
Supplier ID: 0000019307  
Type: Indefinite Quantity  
Not-to-exceed amount: **\$9,900,000**

The history of this contract and its modifications is as follows:

<b>Modification</b>	<b>Start date</b>	<b>End date</b>	<b>Amount</b>
Original contract	11/1/2019	10/31/2022	\$7,687,580
1	No change	10/31/2024	\$9,900,000


This Modification No. 1 changes the contract as follows:

- 1) Extends the contract by two (2) years through to an end date of October 31, 2024;
- 2) Increases NTE amount by \$2,212,420 to \$9,900,000;
- 3) Adds an additional line item, SS-1H W/PAIL, (line #14) to the Award Sheet pursuant to Section 86, "Additional Items," of the Agreement and which was awarded through competitive solicitation, Sourcing Event ID # 0000006785. See *Attachment A* to this Modification No. 1; and
- 4) Increases prices by 47.60% in accordance with contract Section 79 (Price Adjustment). Please refer to *Attachment A* to this Modification No. 1.

All other terms and conditions remain the same.

**CITY**

Recommended by:

DocuSigned by:  
  
0678C8C4FB3C445...

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Paul Cheng  
Supervising Purchaser  
Office of Contract Administration

Approved:

DocuSigned by:  
  
9AEA44694D514E7...

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

**Granite Rock Company**

DocuSigned by:  
  
75689EBEE85C4BE...

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Donita Granado  
Material Sales Lead  
PO Box 50001  
Watsonville, CA 94105

City Supplier Number: 0000019307

**Attachment A – Contract Modification #1 Award Sheet**

Item No.	Description	Unit of Measure	Estimated Quantity	Unit Price	Updated Unit Price per Mod #1
1	<p><b>ASPHALT, PETROLEUM EMULSIFIED, RS-1 Quick setting grade 5 gallon pail</b></p> <p>Picked up in City truck</p> <p>Location of plant may be taken into consideration in making award</p> <p>Location of Contractor's Bunker:</p>	GL	10,000	<del>\$ 6.81</del>	<b>\$10.05</b>
2	<p><b>Asphalt, Petroleum Emulsified, SS-1 Quick Setting Grade 5 Gallon Pail</b></p> <p>Picked up in City truck</p> <p>Location of plant may be taken into consideration in making award</p> <p>Location of Contractor's Bunker:</p>	GL	10,000	<del>\$ 5.15</del>	<b>\$7.60</b>
3	<p><b>ASPHALT, PETROLEUM EMULSIFIED, TYPE SS-1 Quick setting grade</b></p> <p>Picked up in City small portable trailers</p> <p>Location of plant may be taken into consideration in making award</p> <p>F.O.B. Origin Contractor's Bunker</p> <p>Location of Contractor's Bunker:</p>	GL	28,000	\$5.15	<b>\$7.60</b>
4	<p><b>ASPHALT, PETROLEUM EMULSIFIED, TYPE SS-1 Quick setting grade</b></p>	GL	28,000	\$5.15	<b>\$7.60</b>

**Attachment A – Contract Modification #1 Award Sheet**

<b>Item No.</b>	<b>Description</b>	<b>Unit of Measure</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Updated Unit Price per Mod #1</b>
	<p><b>55 gallon 250 tank</b></p> <ul style="list-style-type: none"> <li>• Vendor must provide initial 250 gal. container</li> <li>• Vendor must fill containers at City's Asphalt Plant 160 Napoleon Street San Francisco, CA</li> </ul> <p>Deliver to Asphalt Plant 160 Napoleon Street San Francisco, CA</p> <p>F.O.B. Destination Freight prepaid and allowed</p> <p>Tanker-load deliveries</p> <p><b>DELIVERY CHARGE:</b></p>				
5	<p><b>ASPHALT, SEALANT,</b> Single component, hot applied, Elastically modified asphalt Composition. Crafco and polyflex types 1, 2, 3; or equal. Packed in 30 lb bags/boxes, which contain a non-adherent film. Then, palletized with weather-proof covering.</p> <p>Deliver to Asphalt Plant 160 Napoleon Street San Francisco, CA</p> <p>F.O.B. Destination</p> <p><b>DELIVERY CHARGE:</b></p>	LB	5,000	<del>\$1.17</del>	<b>\$1.72</b>
6	<p><b>ASPHALT, PETROLEUM COLD, MIX</b> Approximately 94% aggregate, 6% asphalt, aggregate to contain</p>	TN	2,000	<del>\$125.00</del>	<b>\$184.50</b>



**Attachment A – Contract Modification #1 Award Sheet**

<b>Item No.</b>	<b>Description</b>	<b>Unit of Measure</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Updated Unit Price per Mod #1</b>
	50% top sand, asphalt to be Slow Cure (SC) #3  Picked up in City truck  Location of plant may be taken into consideration in making award  F.O.B. Original Contractor's Bunker  Location of Contractor's Bunker:  Deliver to Asphalt Plant 160 Napoleon Street San Francisco, CA  <b>DELIVERY CHARGE:</b>				
7	<b>ASPHALT, CONCRETE            BASE 1", Marshall Mix with            PG 64-16            BITUMEN OIL</b>  Picked up in City Truck  Location of plant may be taken into consideration in making award  F.O.B. Origin Contractor's Bunker  Location of Contractor's Bunker:  <b>DELIVERY CHARGE:</b>	TN	4,000	\$86.10	<b>\$127.08</b>

**Attachment A – Contract Modification #1 Award Sheet**

<b>Item No.</b>	<b>Description</b>	<b>Unit of Measure</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Updated Unit Price per Mod #1</b>
		EA			
8	<p><b>ASPHALT, CONCRETE BASE 3/4" with PG 64-16 BITUMEN OIL</b></p> <p>Picked up in City truck</p> <p>Location of plant may be taken into consideration in making award</p> <p>F.O.B. Origin Contractor's Bunker</p> <p>Location of Contractor's Bunker:</p> <p><b>DELIVERY CHARGE:</b></p>	TN	30,000	<del>\$85.00</del>	<b>\$125.46</b>
9.	<p><b>ASPHALT, CONCRETE TOP 1/2", with PG 64-10 BITUMEN OIL</b></p> <p>Picked up in City truck</p> <p>Location of plant may be taken into consideration in making award</p> <p>F.O.B. Origin Contractor's Bunker</p> <p>Location of Contractor's Bunker:</p> <p>_____</p> <p><b>Delivery Charge:</b></p>	TN	30,000	<del>\$85.00</del>	<b>\$125.46</b>
10.	<p><b>ASPHALT, CONCRETE TOP 3/8", with PG 64-10 BITUMEN OIL</b></p> <p>Picked up in City truck.</p> <p>Location of plant may be taken into consideration in making award</p> <p>F.O.B. Origin Contractor's Bunker</p>	TN	10,000	<del>\$93.50</del>	<b>\$138.00</b>

**Attachment A – Contract Modification #1 Award Sheet**

Item No.	Description	Unit of Measure	Estimated Quantity	Unit Price	Updated Unit Price per Mod #1
	Location of Contractor's Bunker: _____  <b>Delivery Charge:</b>	EA			
11.	<b>ASPHALT, CONCRETE TOP 1/4", with PG 64-10 BITUMEN OIL</b>  Picked up in City truck  Location of plant may be taken into consideration in making award  F.O.B. Origin Contractor's Bunker  Location of Contractor's Bunker: _____  <b>Delivery Charge:</b>	TN	5,000	\$ 93.50	<b>\$138.00</b>
12.	<b>ASPHALT, CONCRETE FINE TOP, SHEET with PG 64-10 BITUMEN OIL</b>  Picked up in City truck  Location of plant may be taken into consideration in making award  F.O.B. Origin Contractor's Bunker  Location of Contractor's Bunker: _____  <b>Delivery Charge:</b>	TN	1,000	<del>\$95.50</del>	<b>\$140.96</b>
13.	<b>• Plant Opening Charge: Weeknights and Saturdays Based on 8 hour shift <u>\$2,300.00</u></b>				<b>N/A</b>

**Attachment A – Contract Modification #1 Award Sheet**

Item No.	Description	Unit of Measure	Estimated Quantity	Unit Price	Updated Unit Price per Mod #1
	<ul style="list-style-type: none"> <li>• <b>Plant Opening Charge: Sunday &amp; Holidays Based on 8 hour shift <u>\$3,800.00</u></b></li> <li>• <b>Plant Overtime Per hour after 8 hours <u>\$330.00</u></b></li> </ul>				
14.	<p><b>SS-1H w/Pail - ASPHALT, PETROLEUM ANIONIC EMULSION (5-GALLON PAIL)</b></p> <p><b>Picked up from Contractor plant in City truck.</b></p> <p><b>Location of Contractor's Bunker:</b></p> <p><b>1321 Lowrie Ave, South San Francisco, CA 94080</b></p> <p><b>NOTE: Total cumulative purchases of this item shall not exceed the City's Minimum Competitive Amount for Commodities as defined under Chapter 21 of the Administrative Code, which at the present moment is \$129,000, for the total allowable contract term.</b></p>	PAIL	36	<b>\$65.00</b>	<b>NEW additional item; not subject to price increase</b>



DATE: January 9, 2023  
TO: Angela Calvillo, Clerk of the Board  
FROM: Sailaja Kurella, Director of Office of Contract Administration (OCA) and Purchaser  
SUBJECT: **Resolution to approve second amendment to Term Contract 75955 – Petroleum, Emulsions, Sealants, and Concrete Base with Granite Rock Company**

Enclosed is the resolution authorizing a second amendment to Term Contract 75955 (PeopleSoft Contract ID 1000016483) with Granite Rock Company, increasing the contract amount by \$13,989,728 for a total not to exceed (“NTE”) amount of \$23,889,728 and to extend the term by two (2) years to October 31, 2026.

This contract was awarded pursuant to a solicitation (Sourcing Event 0000002701) conducted on August 12, 2019 by the Office of Contract Administration (OCA). The solicitation resulted in the award to Granite Rock Company as the lowest responsive bidder, with an initial contract NTE amount of \$7,687,850 and duration of three years, from November 1, 2019 to October 31, 2022. The initial contract NTE amount was based on the awarded bidder’s bid sheet which, in turn, was based on the City’s then estimated usage for 3 years.

On June 10, 2022, OCA executed Amendment 1 whereby the contract’s NTE was increased to \$9,900,000 and its duration was extended to October 31, 2024 based on the following usage data and estimated spend:

Estimated Need Based on Data Available as of June 2022*	
<b>Avg Monthly Spend</b>	\$ 178,476
<b>Total Remaining Months Until Contract End Date of October 31, 2024</b>	28
<b>Total Needed for Remaining Months</b>	\$ 4,997,332
<b>Less Current Contract Balance</b>	\$ 2,693,842
<b>Total Needed Increase to NTE</b>	\$ 2,303,490
<b>Current NTE</b>	\$ 7,687,850
<b>Revised NTE</b>	<b>\$ 9,991,340</b>

\* Not adjusted for the impact of a 47.60% price increase.

Amendment 1 allowed a price increase of 47.60% based on producer price index (PPI). Given the significant increase in price, OCA limited its extension to only 24 months to allow OCA sufficient time to determine if it should continue with the existing contract or conduct a new bid. OCA has since determined that it is in the City’s best interest to continue with the existing contract and postpone a new solicitation until the market has stabilized. This will ensure City does not expend time and resources on a solicitation that (a) will likely result in pricing that is not any better than the pricing available under the existing contract; and (b) will lock City into a multi-year contract with higher than average rates for initial pricing subject to further annual PPI increases.

At this time, OCA seeks to execute Amendment 2 whereby the contract’s NTE will be to \$23,889,728 and its duration extended to October 31, 2026. The increase in NTE is based on the following usage data and estimated



spend:

Estimated Need Based on Data Available as of December 2022	
Avg Monthly Spend	\$ 346,832
Total Remaining Months Until Contract End Date of October 31, 2026	46
Total Needed for Remaining Months	\$ 15,954,263
Less Current Contract Balance	\$ 1,964,535
Total Needed Increase to NTE	\$ 13,989,728
Current NTE	\$ 9,900,000
Revised NTE	\$ 23,889,728

This contract is critical as part of maintaining the City's infrastructure to ensure safe, paved streets for transportation needs of pedestrians, cyclists, motorists, and the people of San Francisco. Approval of this resolution will allow City departments to continue procuring the materials required for their work in a streamlined and cost-efficient manner.

If you have any questions or require additional information, please contact Carissa Wu on my team at (628)-652-1642.

Enclosures:

- TC #75955 - Petroleum, Emulsions, Sealants, and Concrete Base Agreement
- TC #75955 - Petroleum, Emulsions, Sealants, and Concrete Base Agreement – Modification 1
- TC #75955 - Petroleum, Emulsions, Sealants, and Concrete Base Agreement – DRAFT Modification 2
- Resolution for TC #75955
- S.F. Ethics Commission form 126f4, Notification of Contract Approval



## San Francisco Ethics Commission

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

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 230039

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

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

A Public Document

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

#### 1. FILING INFORMATION

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

#### 2. CITY ELECTIVE OFFICE OR BOARD

<b>OFFICE OR BOARD</b>	<b>NAME OF CITY ELECTIVE OFFICER</b>
Board of Supervisors	Members

#### 3. FILER'S CONTACT

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

#### 4. CONTRACTING DEPARTMENT CONTACT

<b>NAME OF DEPARTMENTAL CONTACT</b>	<b>DEPARTMENT CONTACT TELEPHONE NUMBER</b>
Carissa Wu	628-652-1642
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
ADM Office of Contract Administration	carissa.wu@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> Granite Rock Company	<b>TELEPHONE NUMBER</b> 650-482-3800
<b>STREET ADDRESS (including City, State and Zip Code)</b> 350 Technology Drive, Watsonville, CA 95076	<b>EMAIL</b> dgranado@Graniterock.com

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 230039
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$23,889,728		
<b>NATURE OF THE CONTRACT (Please describe)</b> Provide Petroleum, Emulsions, Sealants, and Concrete Base for the City departments; increasing the contract amount by \$13,989,728 for a total not to-exceed amount of \$23,889,728 and to extend the term by (2) years to October 31,2026.		

7. COMMENTS

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



**9. AFFILIATES AND SUBCONTRACTORS**

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

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Orcutt	John	Board of Directors
2	Squeri	Tom	Board of Directors
3	Lemon	Peter	CEO
4	Lindsey	Dan	CFO
5	Jeffery	Kevin	Other Principal Officer
6	Dunwoody	Dana	Board of Directors
7	Jeng	David	Board of Directors
8	Kingzett	Gloria	Board of Directors
9	Murphy	Kevin	Board of Directors
10	woolpert	Marianne	Board of Directors
11	woolpert	Rose Ann	Board of Directors
12	woolpert 2012 Family Trust		Shareholder
13			
14			
15			
16			
17			
18			
19			

**9. AFFILIATES AND SUBCONTRACTORS**

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

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

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

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			

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

**10. VERIFICATION**

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

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

<p><b>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</b></p>  <p>BOS Clerk of the Board</p>	<p><b>DATE SIGNED</b></p>
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**From:** [Hayward, Sophie \(ADM\)](#)  
**To:** [BOS Legislation, \(BOS\)](#); [BOS-Budget Analyst](#)  
**Cc:** [Menard, Nicolas \(BUD\)](#); [Kurella, Sailaja \(ADM\)](#); [Yip, Angela \(ADM\)](#)  
**Subject:** Submittal: Contract Amendment for Granite Rock Company  
**Date:** Monday, January 9, 2023 9:02:09 AM  
**Attachments:** [BOS Packet\\_TC 75955 Modification 2 Granite Rock.zip](#)

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Hello, Madame Clerk,

Attached please find the submittal package for a resolution for a second amendment to Term Contract 75955, for petroleum, emulsions, sealants, and concrete base with the Granite Rock Company. The contract was originally awarded in 2019 following a solicitation in August of that year.

The proposed second amendment would increase the Not To Exceed to \$23,889,728 and would extend the duration to October 31, 2026.

The attached submittal package includes a cover memo, the draft resolution, form 126, as well as the draft modification docs.

Please feel free to let me know if there is additional information I can send your way.

Best,  
Sophie

Sophie Hayward | Pronouns: she/her  
Legislative and Public Affairs Director  
Office of the City Administrator  
City & County of San Francisco  
[sophie.hayward@sfgov.org](mailto:sophie.hayward@sfgov.org)

[Sign up here](#) to receive the City Administrator's newsletter.