



Gavin Newsom, Mayor
Edward D. Reiskin, Director



(415) 554-6229
FAX (415) 554-6232
<http://www.sfdpw.com>

Department of Public Works
Contract Administration Division
Financial Management and Administration
875 Stevenson Street, Room 420
San Francisco, CA 94103-0903
Gordon Choy, Division Manager

NOTICE TO PROCEED

Contractor: Montgomery Corporation
120 Montgomery Street, Suite 715
San Francisco, CA 94104

Project: Inspector of Record Inspection Services for the San Francisco General Hospital
Rebuild Program

Term: January 3, 2011 - December 31, 2016

Job No.: 6694A

DPW Order No.: 179,031


Contract Amount: \$3,998,607.00 (partial encumbrance #1 of \$300,000.00)

Controller's Posting Number:

Reference this # on your invoices No.: DPAT11000071

Date Posted: January 3, 2011

Edward D. Reiskin
Director of Public Works

by 
Gordon Choy
Division of Contract Administration
January 3, 2011

cc: Joe Chin, DPW Project Management - BOA

attachments: Contract Purchase Order
Appointment
Agreement

GEC:ml

PURCHASE ORDER - NON PURCHASING
DPW - ARCHITECTURE

PO NUMBER: DPAT11000071
PO AMOUNT: \$300,000.00

TO: MONTGOMERY CORP
2262 CHAPMAN LN
PETALUMA CA 94952-0000

PO PRINT DATE: 01/03/2011

PHONE : 707-762-4046
VENDOR ID: 28265

TERMS: NET 30
FOB : DEST

ISSUE DATE : 01/01/2011

<<

DELIVER TO: DPW-BUREAU OF ARCHITECTURE (PWD09)
30 VAN NESS AVE #4100
SAN FRANCISCO CA 94102
Edward D. Reiskin, Director of Public Works

AUTHORIZED SIGNATURE: By: Jocelyn Quintos DATE : 01032011
Jocelyn Quintos, Business Services Div Manager PHONE:

ORIGINAL ORDER MUST BE SIGNED TO BE VALID

INVOICE TO: DPW-BUREAU OF ARCHITECTURE (PWD09)
30 VAN NESS AVE #4100
SAN FRANCISCO CA 94102

TERMS:

JOB#6694A DPW#179,031 DPW ID# FPA11050-1
INSPECTOR OF RECORD INSPECTION SERVICES FOR THE SAN FRANCISCO GENERAL
HOSPITAL REBUILD PROGRAM

THE INSPECTOR OF RECORD (IOR) CONSULTANT TEAM WILL PROVIDE (OSHDP)
CERTIFIED INSPECTOR OF RECORD (IOR) INSPECTION SERVICES FOR THE SFGH
REBUILD PROGRAM DURING THE CONSTRUCTION PHASE.

TOTAL CONTRACT AMOUNT NOT TO EXCEED \$3,998,607.00. CONTRACT TO BE
ENCUMBERED IN PHASE. TERM: CERTIFICATION - 12/31/16.
PSC# 4006-10/11, APPROVED 7/19/2010. PSC DURATION 8/1/2010-12/31/2016
INSURANCE REQ: G/L-\$1M; A/L-\$1M; W/C-\$1M; P/L-\$1M

CM: JOE CHIN, DPW PROJECT MANAGEMENT: 695-3862

PURCHASE ORDER - NON PURCHASING
DPW - ARCHITECTURE

PO NUMBER: DPAT11000071
PO AMOUNT: \$300,000.00

ITEM	COMMODITY ID	UOM TAX	QUANTITY	UNIT PRICE	TOTAL PRICE
1	7210-30 SVC, ENGINEERING; GENERAL	JB N	1.00	300,000.0000	300,000.00

JOB#6694A DPW#179,031 DPW ID#FPA11050-1 PARTIAL ENCUMBRANCE #1
INSPECTOR OF RECORD INSPECTION SERVICES FOR THE SAN FRANCISCO GENERAL
HOSPITAL REBUILD PROGRAM

THE IOR CONSULTANT WILL PROVIDE OSHPD CERTIFIED IORS WITH CLASS "A" LICENSING THAT WILL SERVE AS THE CITY'S REPRESENTATIVE LEADING THE INSPECTION ACTIVITIES FOR THE SFGH REBUILD PROGRAM DURING THE CONSTRUCTION PHASE TO ENSURE COMPLIANCE WITH ALL REQUIREMENTS OF THE BUILDING CODE, OSHPD TESTING, INSPECTION, AND OBSERVATION (TIO) PROGRAM, CONSTRUCTION DOCUMENTS, AND APPLICABLE STATE LAWS AND REGULATIONS. THE LEAD IOR WILL ALSO PROVIDE DESIGN/ASSIST CONSULTATION DURING THE DESIGN/PERMITTING PHASE TO AID IN THE IDENTIFICATION OF EFFICIENT AND COST EFFECTIVE SOLUTIONS TO CODE COMPLIANCE ISSUES.

TOTAL CONTRACT AMOUNT NOT TO EXCEED \$3,998,607.00. THE AMOUNT OF THE CONTRACT SHALL BE ENCUMBERED IN PHASES. CONTRACT TERM FROM CERTIFICATION TO 12/31/2016. AMOUNT OF FIRST ENCUMBRANCE: \$300,000.00

CM: JOE CHIN, DPW PROJ. MGT: 695-3862

TOTAL ITEMS AMOUNT	\$300,000.00
SALES TAX	\$.00
INVOICE AMOUNT	\$300,000.00

PURCHASE ORDER - NON PURCHASING
DPW - ARCHITECTURE

PO NUMBER: DPAT11000071
PO AMOUNT: \$300,000.00

SFX INDEX	SUBOBJ	USERCODE	PROJCT	PRJDTL	GRANT	GRNTDTL	AMOUNT
01	PWA583CCF08B	02702		CHGREB	CT335B		300,000.00
							----- 300,000.00

City and County of San Francisco



Gavin Newsom, Mayor
Edward D. Reiskin, Director



(415) 554-6920
FAX (415) 554-6944
<http://sfdpw.org>

Department of Public Works
Office of the Director
1 Dr. Carlton B. Goodlett Place, Room 348
San Francisco, CA 94102

**DPW Order No: 179.031
CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC WORKS
APPOINTMENT**

Contractor: Montgomery Corporation
120 Montgomery Street, Suite 715
San Francisco, CA 94104

is appointed to provide Inspector of Record Inspection Services for the San Francisco General Hospital Rebuild Program.

Payment will be made upon submission of approved invoice based upon work performed satisfactorily. Total cost not to exceed **\$3,998,607.00**. The amount of the contract shall be encumbered in phases. Estimated completion date is December 31, 2016.

Contractor shall indemnify and hold harmless the City & County of San Francisco, its officers and employees and furnish certificates of insurance directly protecting himself, any subcontractors and the City & County of San Francisco. The City & County of San Francisco, its officers, agents and employees shall be named as additional insureds and insurance shall be for:

Commercial General Liability (bodily injury and property damage)	\$1,000,000 Single Limit
Business Automobile Liability (bodily injury and property damage)	\$1,000,000 Single Limit
Workers' Compensation; Employers' Liability	\$1,000,000 Per Claim
Professional Liability	\$1,000,000 Per Claim

A **Notice To Proceed** and a **\$300,000.00 Contract Purchase Order** will be issued to the Contractor.

Funds are available:
Index Code PWA583CCF08B, Project/Project Detail CHGREB/CT335B, Fund Type/Fund/Subfund 3C XCF 08B, SUBOBJ 02702

DISTRIBUTION:
Montgomery Corporation
Joe Chin, DPW-Project Management
James Whelley, First Source Hiring Administrator, 3120 Mission St.

GEC: cc
Approved: 12/15/10

RECEIVED
10 DEC 15 PM 3:47
DPW
CONTRACT ADMINISTRATIONS

[Click here to sign this section](#)

- Valid signature - Signed by Carlson, Robert [Show Details](#) [X Remove](#)
Wednesday, December 15, 2010 1:25:02 PM
- Valid signature - Signed by Reiskin, Ed [Show Details](#) [X Remove](#)
Wednesday, December 15, 2010 2:44:33 PM

**City and County of San Francisco
Department of Public Works
875 Stevenson Street, Room 420
San Francisco, California 94103**

Agreement between the City and County of San Francisco and

**Montgomery Corporation
120 Montgomery Street, Suite 715
San Francisco, CA 94104**

This Agreement is made this 18th day of November, 2010, in the City and County of San Francisco, State of California, by and between: Montgomery Corporation, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of Public Works, hereinafter referred to as "Director"

Recitals

WHEREAS, the **Department of Public Works** ("Department") wishes to provide Inspector of Record Inspection Services for the San Francisco General Hospital Rebuild Program; and issued an award of contract DPW Order #179,031 dated effective December 15, 2010; and,

WHEREAS, a Request for Qualification ("RFQ") was issued on March 28, 2008, and City selected Contractor as the highest qualified scorer pursuant to the RFQ; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Resolution No. PSC #4006-10/11 on July 19, 2010.

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

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

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from the date of certification by the Controller to December 31, 2016.

3. Effective Date of Agreement

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

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 4 of this Agreement, that the Director of Public Works, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed \$3,998,607.00 (THREE MILLION NINE HUNDRED NINETY-EIGHT THOUSAND SIX HUNDRED SEVEN DOLLARS). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the **Department of Public Works** as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

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

6. Guaranteed Maximum Costs

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

authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format

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

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Left blank by agreement of the parties. (Disallowance)

10. Taxes

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

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

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

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

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

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

11. Payment Does Not Imply Acceptance of Work

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

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

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

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's

work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Taxes and Other Expenses.

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

15. Insurance

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

- 1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- 2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- 3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- 4) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

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

- 1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
- 2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

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

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

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

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

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

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

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

16. Indemnification

a. **General.** To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

b. **Limitations.** No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

c. **Copyright infringement.** Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Contractor's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

17. Incidental and Consequential Damages

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

18. Liability of City

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

19. Left blank by agreement of the parties. (Liquidated damages)

20. Default; Remedies.

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

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

- | | |
|---|---------------------------------------|
| 8. Submitting False Claims; Monetary Penalties. | 37. Drug-free workplace policy |
| 10. Taxes | 53. Compliance with laws |
| 15. Insurance | 55. Supervision of minors |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment | 58. Graffiti removal |

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

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

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

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

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

21. Termination for Convenience

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

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

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

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

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

(6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

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

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

(1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

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

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

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

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

22. Rights and Duties upon Termination or Expiration

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

- | | |
|----------------------------|---|
| 8. Submitting false claims | 24. Proprietary or confidential information of City |
| 9. Disallowance | 26. Ownership of Results |

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

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

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

24. Proprietary or Confidential Information of City

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

25. Notices to the Parties

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

To City: Department of Public Works
Division of Contract Administration
 875 Stevenson Street, Room 420
 San Francisco, CA 94103

To Contractor: Montgomery Corporation
 120 Montgomery Street, Suite 715
 San Francisco, CA 94104
 c/o Scott Montgomery, President

Any notice of default must be sent by registered mail.

26. Ownership of Results

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

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

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

29. Subcontracting

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

30. Assignment

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

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated,

shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Earned Income Credit (EIC) Forms

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

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

b. Compliance and Enforcement

1) Enforcement

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") 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 HRC 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 HRC 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 HRC or the Controller upon request.

2) **Subcontracting Goals**

The LBE subcontracting participation goal for this contract is 7%. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor. Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

3) **Subcontract Language Requirements**

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

4) **Payment of Subcontractors**

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

34. **Nondiscrimination; Penalties**

a. Contractor Shall Not Discriminate

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

b. Subcontracts

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

c. Nondiscrimination in Benefits

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San 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 HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference

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

35. MacBride Principles—Northern Ireland

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

36. Tropical Hardwood and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

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

38. Resource Conservation

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

39. Compliance with Americans with Disabilities Act

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

40. Sunshine Ordinance

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

41. Public Access to Meetings and Records

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

42. Limitations on Contributions

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

43. Requiring Minimum Compensation for Covered Employees

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

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

Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

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

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

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

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

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

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

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

44. Requiring Health Benefits for Covered Employees

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

- a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.
- b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.
- c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.
- d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.
- e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.
- f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.
- g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.
- h. Contractor shall keep itself informed of the current requirements of the HCAO.
- i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.
- k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
- m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the

agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference.

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

b. First Source Hiring Agreement.

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

- 1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.
- 2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.
- 3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

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

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

6) Set the term of the requirements.

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

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

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

c. Hiring Decisions

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

d. Exceptions

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

e. Liquidated Damages.

Contractor agrees:

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

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

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

4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly

withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

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

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

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

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

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

46. Prohibition on Political Activity with City Funds

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

47. Preservative-treated Wood Containing Arsenic

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

48. Modification of Agreement

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

49. Administrative Remedy for Agreement Interpretation

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

50. Agreement Made in California; Venue

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

51. Construction

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

52. Entire Agreement

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

53. Compliance with Laws

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

54. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

55. left blank by agreement of the parties. (Supervision of Minors)**56. Severability**

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

57. Protection of Private Information

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

58. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation,

signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements.

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

60. Left blank by agreement of the parties. (Slavery Era Disclosure)

61. Cooperative Drafting.

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

THIS SECTION INTENTIONALLY LEFT BLANK

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

CITY

CONTRACTOR

Recommended by: *FA*

Edgar A. Lopez
Signature

Edgar A. Lopez, Bureau Manager
Name

Montgomery Corporation
Name

120 Montgomery Street, Suite 715
Address

San Francisco, CA 94104
City State Zip

Approved as to Form:
Dennis J. Herrera
City Attorney

By *George W. Wong*
Deputy City Attorney

I have read and understood Sec. 31, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Approved:
Edward D. Reiskin

Edward D. Reiskin
Director of Public Works

By *Scott Montgomery*
Signature

Scott Montgomery, President
Name Title

415-403-3090
Area Code Phone Number

#68-0387759
Federal Employer Number

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges

Appendix A
Services to be provided by Contractor

1. Description of Services

RFQ shall mean the City's Request For Qualifications for professional services for this Project and the Consultant's proposal (response to the RFQ) to provide such services. All requirements of the RFQ and the representations made in the Consultant's RFQ proposal that are not in conflict with provisions of this contract are hereby incorporated by reference and made an integral part of the contract as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFQ or the proposal, this Agreement shall control except where the RFQ or the proposal refers to services not otherwise mentioned in this Agreement, then and to such extent the RFQ or proposal shall control.

Montgomery Corporation has been selected as the Lead Inspector of Record (IOR) Inspection Services Consultant and will be providing inspector of record inspection services in support of the San Francisco General Hospital Rebuilt Program.

Consultant agrees to perform the following services outlined in the Executive Construction Management ("Executive CM") RFQ (Relevant sections and Inspector of Record portions only) and as modified by the attached "Exhibit 1 - IOR Services Work Plan for SFGH Rebuild." The following is a summary of the general tasks to be performed and is not intended to be inclusive of the complete scope of work:

1. Provide a Lead OSHPD Class A certified Hospital Inspector that will serve in the role as the Lead Inspector of Record (IOR) for the construction of the new hospital facility to ensure that all work conforms to the approved plans and specifications and any approved change orders to those documents and general oversight and supervision of all other IORs (including City IOR staff and Other City Consultant IOR staff) assigned to the SFGH Rebuild Program. Any proposed Lead IOR will be subject to final approval by City, OSHPD, and the Architect of Record.
2. Provide additional OSHPD Class A certified Hospital Inspectors that will serve in the role as IOR for the construction of the new hospital facility to ensure that all work conforms to the approved plans and specifications and any approved change orders to those documents. Any proposed IORs will be subject to final approval by the City, OSHPD, and the Architect of Record.
3. Once an IOR has been approved by OSHPD and the Architect of Record and assigned to the Project, the individual shall be made available immediately to the Project for the duration of this contract. Only for extraordinary reasons would the City consider replacements for the approved IOR. All proposed replacements will be subject to approval by the City, OSHPD, and the Architect of Record and shall possess equal or superior qualifications.
4. Inspect all areas of construction including architectural and accessibility issues; mechanical; plumbing; electrical; fire and life safety; structural; and anchorage of non-structural elements.
5. Monitor and track all OSHPD change order drawings/specifications.
6. Monitor and track all tests and reports required by the OSHPD Testing, Inspection, and Observation (TIO) Program.
7. The IORs shall attend weekly progress meetings with the City, CM/GC, Architect/Engineer, and Executive CM.

8. The IOR shall provide a daily inspection report documenting all inspections that were performed, all tests that were witnessed, all deficiency items noted during inspection, etc.
9. Support City Staff and Executive CM to monitor CM/GC's quality assurance/quality control (QA/QC) program.
10. Utilize the Executive CM's electronic reporting system (Prolog, Encompass, etc.) independent of the CM/GC's QA/QC program that tracks, monitors, and documents all work that require testing and inspection and all records of the entities that have inspected such work for acceptance.
11. Utilize the Executive CM's electronic construction management reporting system (Prolog, Encompass, etc.) independent of the CM/GC's QA/QC program that tracks, monitors, and documents all non-conforming work reports (NCR) and OSHPD/IOR correction notices, and the correction of such NCR(s) and correction notices.
12. Assist with the coordination of utility tie-in connections to existing facilities and campus services to minimize disruption to hospital operations.
13. Assist in the efforts in providing and maintaining daily and weekly digital photographic records of progress of the work, as needed and approved by the City.
14. Support City Staff in coordination of construction activities with SFGH campus and hospital operations and neighboring community.
15. Assist City Staff with coordination of testing and inspection with OSHPD, SF Building Inspection Department, SF Fire Marshall, and other Agencies having Jurisdiction, including commissioning, project close-out, and functional and operational activities.
16. Manage, coordinate, and schedule all special inspections and testing services.
17. Support Executive Construction Manager in coordinating building commissioning services with CM/GC and Third Party Commissioning Authority, as required to satisfy OSHPD and LEED requirements. Coordinate all OSHPD and LEED documentation and close-out activities.

2. Procedure for the Utilization and Selection of IOR Staff from Various IOR Consultant Teams

In order to make available to the Rebuild Project a pool of qualified and experienced Inspector of Record (IOR) candidates to be considered and approved by the City, OSHPD, and the Architect of Record for utilization on the Project, DPW intends to have in place three on-call Inspector of Record Inspection Services Contracts. For the purpose of discussion under this section, this contract will be referred to as IOR Contract A. The other two IOR Contracts will be referred to as IOR Contract B and IOR Contract C. All three contracts must work with DPW in collaboration with OSHPD, to review and select prospective IORs candidates for the Project. DPW reserves the right of refusal for any proposed IORs.

When a need for additional IORs is identified by DPW, the process to request and select the IORs candidates from these three contracts are as follows (See also **Exhibit 2 – IOR Staffing Selection Flowchart**):

1. DPW will contact and request the Consultant of IOR Contract A to select and propose one IOR candidate from the list of IORs submitted as part of the RFQ. DPW will submit proposed IOR candidate to OSHPD and Architect of Record for consideration to be added to the current IOR Team for the Rebuild Project.

2. If the proposed IOR candidate is not accepted by DPW, OSHPD and/or the Architect of Record, DPW will request the Consultant of IOR Contract B to submit one proposed IOR candidate from the list of IORs submitted as part of the RFQ. DPW will submit proposed IOR candidate to OSHPD and Architect of Record for consideration to be added to the current IOR Team for the Rebuild Project.
3. If the proposed IOR candidate is not accepted by DPW, OSHPD and/or the Architect of Record, DPW will request the Consultant of IOR Contract C to submit one proposed IOR candidate from the list of IORs submitted as part of the RFQ. DPW will submit proposed IOR candidate to OSHPD and Architect of Record for consideration to be added to the current IOR Team for the Rebuild Project.
4. If the proposed IOR candidate is not accepted by DPW, OSHPD and/or the Architect of Record, DPW will request the Consultant of IOR Contract A to submit one proposed IOR candidate from the list of IORs submitted as part of the RFQ. DPW will submit proposed IOR candidate to OSHPD and Architect of Record for consideration to be added to the current IOR Team for the Rebuild Project.
5. DPW will sequentially rotate through IOR Contract A, IOR Contract B, and IOR Contract C to ensure equal opportunity for all three contracts to propose an IOR for utilization on the Project until the IOR position is filled by a candidate acceptable by OSHPD and Architect of Record.
6. When another IOR position opens up for the Project, DPW will request from the next Consultant in line from the last Consultant that successfully proposed an IOR that was approved by OSHPD. For example, if the Consultant of IOR Contract A provided the last IOR, DPW will request Consultant of IOR Contract B to propose another IOR candidate for a new opening. If the Consultant of IOR Contract B provided the last IOR, DPW will request Consultant of IOR Contract C to propose another IOR candidate for a new opening. If the Consultant of IOR Contract C provided the last IOR, DPW will request Consultant of IOR Contract A to propose another IOR candidate for a new opening.
7. Once the Consultant is notified that the proposed IOR candidate has been accepted by OSHPD and/or Architect of Record, the IOR candidate must report to the Rebuild Project within seven (7) calendar days for assignment from the Lead IOR.
8. DPW reserves the right to modify this procedure as necessary with or without prior notice in order to adapt and respond to the needs of the project.

3. Reports

Consultant shall submit written reports as outlined in the RFQ and as requested by the Department of Public Works ("DPW"). Format for the content of such reports shall be determined by DPW. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

At a minimum, the Consultant shall be responsible for the following reports:

- A. Reporting of all non-conforming work immediately to the City's Construction Manager, Contractor, and any others as designated. The IOR will be expected to prepare a non-conforming work report documenting all discrepancies and nonconforming items noted.
- B. Preparation and submittal of a written Daily Inspection (Compliance) Report documenting all inspections performed, including all deficiencies noted, on a timely basis to the City's Construction Manager, Authority Having Jurisdiction (AHJ), and others as designated. The IOR is expected to submit to the City a Daily Inspection Report at the end of each shift or day. A copy

of the Daily Inspection Report shall remain at the jobsite with the City's Construction Manager for review by the AHJ.

- C. Preparation and submittal of a Monthly Compliance Report.
- D. Preparation of a Final Inspection Report stating that all items requiring inspection were fulfilled and reported and, to the best of their knowledge, in conformance with the approved plans and specifications, approved change orders and the applicable workmanship provisions of the 2008 CBC. Items that are not in conformance, unresolved items or any discrepancies shall be specifically itemized in this report.
- E. Preparation and submittal of Final Closeout Documents/Reports.
- F. IOR Consultant will be expected to retain all pertinent records relating to the services performed for a period of seven (7) years following Project Final Completion during which period the records will be made available to the City at all reasonable times.

4. Department Liaison

In performing the services provided for in this Agreement, Consultant's liaison with the **Department of Public Works** will be Ronald Alameida, Program Manager. The backup DPW Liaison will be Joe Chin, Project Manager.

Appendix A - Exhibit 1 IOR Services Work Plan for SFGH Rebuild

PROJECT STAFFING / LEVEL OF EFFORT PLAN

Overall Schedule			2010				2011																					
			NOV	DEC	TOTALS (HRB)	TOTAL (DOLLARS)	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTALS (HRB)	TOTAL (DOLLARS)	JAN	FEB	MAR	APR	MAY	JUN	JUL	
FEES			Hourly Rate																									
Position	Name	\$	18	18	32	\$5,280	17	17	17	17	17	17	17	18	18	18	18	208	\$4384.48	17	17	17	17	17	17	17		
Inspector of Record (IOR)			Scott Montgomery																									
Position	Name	\$	168	168	336	\$55,644	168	168	168	168	168	168	168	168	168	168	168	2016	\$333,265	168	168	168	168	168	168	168		
Lead Inspector of Record (IOR)			Monte Ecker																									
Position	Name	\$	42	42	84	\$19,886	42	42	42	42	42	42	42	42	42	42	42	504	\$83,316	42	42	42	42	42	42	42		
Inspector of Record (IOR)			Nate Culler																									
Position	Name	\$	42	133	175	\$16,877	133	133	133	133	133	133	133	133	133	133	133	1596	\$153,918	133	133	133	133	133	133	133		
Administrative Supervisor			Sara Grenier																									
Position	Name	\$	45				45	45	45	45	45	45	45	45	45	45	45	540	\$46,813	45	45	45	45	45	45	45		
Document Control Technician I			Chaves																									
SUBTOTAL			627				\$97,697				4884		\$651,697															

REIMBURSABLES			2010				2011																						
			NOV	DEC	TOTALS (HRB)	TOTAL (DOLLARS)	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTALS (HRB)	TOTAL (DOLLARS)	JAN	FEB	MAR	APR	MAY	JUN	JUL		
Misc. Materials & Supplies & Travel Costs																													
Misc							\$500																\$500						
Travel							\$500																\$500						
SUBTOTAL																			1,000										

Annual Encumbrances (FEES + REIMBURSABLES)			\$91,697.12				\$652,697																				
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Appendix A - Exhibit 1 IOR Services Work Plan for SFGH Rebuild

PROJECT STAFFING / LEVEL OF EFFORT PLAN

Overall Schedule	2012						2013												TOTALS (HRB)	TOTAL (DOLLARS)									
	AUG	SEP	OCT	NOV	DEC	TOTALS (HRB)	TOTAL (DOLLARS)	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV			DEC	TOTALS (HRB)	TOTAL (DOLLARS)	JAN	FEB	MAR	APR	MAY	JUN
	FEES																												
Position	Name	17	18	18	18	18	208	\$34,384	17	17	17	17	17	17	17	17	18	18	18	18	208	\$34,384	17	17	17	17	17	17	
Inspector of Record (IOR)	Scott Montgomery																												
Position	Name	168	168	168	168	168	2016	\$333,288	168	168	168	168	168	168	168	168	168	168	168	168	2016	\$333,288	168	168	168	168	168	168	
Lead Inspector of Record (IOR)	Monte Ecker																												
Position	Name	42	42	42	42	42	604	\$83,316	42	42	42	42	42	42	42	42	42	42	42	42	604	\$83,316	42	42	42	42	42	42	
Inspector of Record (IOR)	Nate Cutler																												
Position	Name	133	133	133	133	133	1596	\$183,918	133	133	133	133	133	133	133	133	133	133	133	133	1596	\$183,918	133	133	133	133	133	133	
Administrative Supervisor	Sara Grenier																												
Position	Name	45	45	45	45	45	640	\$48,813	45	45	45	45	45	45	45	45	45	45	45	45	640	\$48,813	45	45	45	45	45	45	
Document Control Technician I	Chaves																												
SUBTOTAL							4884	\$851,697													4884	\$851,697							

REIMBURSABLES	2012						2013												TOTALS (HRB)	TOTAL (DOLLARS)									
Misc. Materials & Supplies & Travel Costs	AUG	SEP	OCT	NOV	DEC	TOTALS (HRB)	TOTAL (DOLLARS)	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV			DEC	TOTALS (HRB)	TOTAL (DOLLARS)	JAN	FEB	MAR	APR	MAY	JUN
	Misc							\$500																	\$500				
Travel							\$500															\$500							
SUBTOTAL								\$1,000														\$1,000							

Annual Encumbrances (FEES + REIMBURSABLES)	\$852,697	\$852,697
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Appendix A - Exhibit 1 IOR Services Work Plan for SFGH Rebuild

PROJECT STAFFING / LEVEL OF EFFORT PLAN

Overall Schedule	2014							TOTALS (HRG)	TOTAL (DOLLARS)	2015												TOTALS (HRG)	TOTAL (DOLLARS)					
	JUL	AUG	SEP	OCT	NOV	DEC	JAN			FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN			FEB	MAR	APR	MAY	
FEEs																												
Position Name	17	17	18	18	18	18	208	\$34,384	17	17	17	17	17	17	17	17	17	18	18	18	18	208	\$34,384	17	17	17	17	17
Inspector of Record (IOR) Scott Montgomery																												
Position Name	188	188	188	188	188	188	2016	\$333,288	188	188	188	188	188	188	188	188	188	188	188	188	188	2016	\$333,288	188	188	188	188	188
Lead Inspector of Record (IOR) Monte Ecker																												
Position Name	42	42	42	42	42	42	504	\$83,316	42	42	42	42	42	42	42	42	42	42	42	42	42	504	\$83,316	42	42	42	42	42
Inspector of Record (IOR) Nate Culler																												
Position Name	133	133	133	133	133	133	1596	\$153,918	133	133	133	133	133	133	133	133	133	133	133	133	133	1596	\$153,918	133	133	133	133	133
Administrative Supervisor Sara Grenier																												
Position Name	45	45	45	45	45	45	540	\$46,813	45	45	45	45	45	45	45	45	45	45	45	45	45	540	\$46,813	45	45	45	45	45
Document Control Technician I Chaves																												
SUBTOTAL								4864	\$651,697													4864	\$651,697					

REIMBURSABLES	2014							TOTALS (HRS)	TOTAL (DOLLARS)	2015												TOTALS (HRS)	TOTAL (DOLLARS)					
	JUL	AUG	SEP	OCT	NOV	DEC	JAN			FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN			FEB	MAR	APR	MAY	
Misc. Materials & Supplies & Travel Costs																												
Misc	0							\$500														\$500						
Travel	0							\$500														\$500						
SUBTOTAL									\$1,000														\$1,000					

Annual Encumbrances (FEES + REIMBURSABLES)	\$652,697							\$652,697																
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Appendix A - Exhibit 1 IOR Services Work Plan for SFGH Rebuild

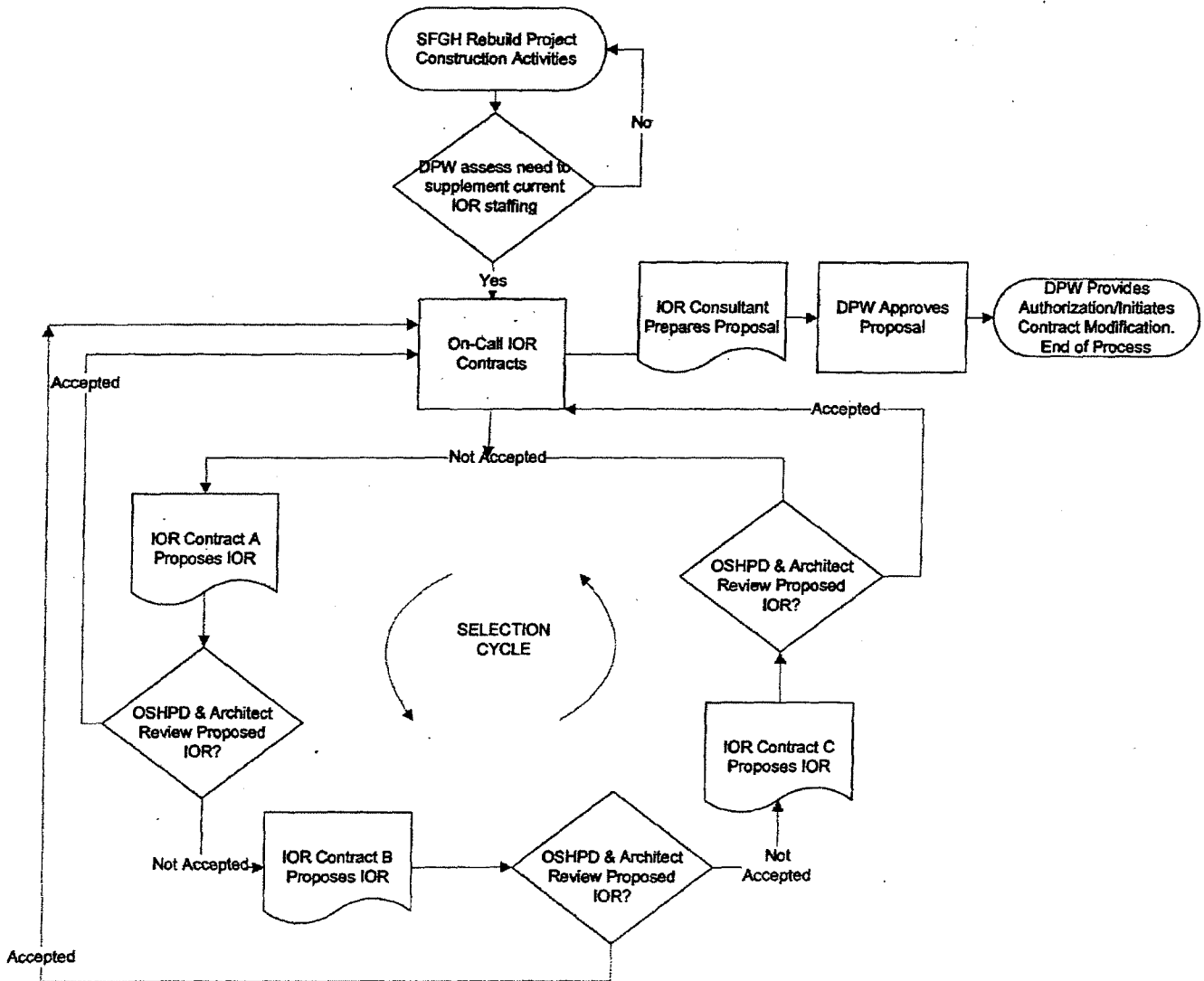
PROJECT STAFFING / LEVEL OF EFFORT PLAN

Overall Schedule	2010								TOTALS (HRS)	TOTAL (DOLLARS)	SUB-TOTAL HOURS	SUB-TOTAL FEES
	JUN	JUL	AUG	SEP	OCT	NOV	DEC					
FEES												
Position Name	17	17	17	16	16	16	16	208	\$24,394	1280	\$211,597	
Inspector of Record (IOR) Scott Montgomery												
Position Name	188	188	188	188	188	188	188	2010	\$332,205	12432	\$2,055,134	
Lead Inspector of Record (IOR) Monte Ecker												
Position Name	40	40	40	40	40	40	40	480	\$70,340	3084	\$509,816	
Inspector of Record (IOR) Nate Cutler												
Position Name	133	133	133	133	133	133	133	1596	\$153,318	9751	\$940,386	
Administrative Supervisor Sara Grenier												
Position Name	40	40	40	40	40	40	40	480	\$41,871	3180	\$275,674	
Document Control Technician I Chaves												
SUBTOTAL								4730	\$642,628			
FEES TOTAL										29727	\$3,992,607	

REIMBURSABLES	2010								TOTALS (HRS)	TOTAL (DOLLARS)	SUBTOTAL HOURS	SUBTOTAL FEES
Misc. Materials & Supplies & Travel Costs	JUN	JUL	AUG	SEP	OCT	NOV	DEC					
Misc			\$500						\$500	-	\$3,000	
Travel			\$500						\$500	-	\$3,000	
SUBTOTAL									\$3,000			
Annual Encumbrances (FEES + REIMBURSABLES)												
\$443,828												
REIMBURSABLES TOTAL										-	\$6,000	

GRAND TOTAL (FEES + REIMBURSABLES)										\$3,998,607
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Appendix A - Exhibit 2 IOR Staffing Selection Flowchart



**Appendix B
Calculation of Charges**

FEE SCHEDULE

This contract agreement will be setup on a time-and-materials basis. Provide an hourly rate for each team member that will be performing services for this project. After the selection of the highest-ranked proposer, the Consultant will be requested to submit an *estimated* total (not-to-exceed) budget with a detailed level of effort table (percentages and hours) for each of the team members to accomplish the requested work scope and a general project schedule outlining major milestones and deliverables.

The Fee Schedule must be completed for the Prime Consultant (provide one copy each for all firms on the JV team) and for **EACH** Sub-consultant listed in the HRC Attachment 2. These fee schedules shall be submitted separately in a sealed envelope and delivered with the proposal package. See Section 7 for submittal requirements.

The sealed envelope shall be titled "**FEE SCHEDULE FOR RFQ IOR SERVICES 2010**" and include the name of the Proposer.

Consultants must submit billing rates for all prime consultants and sub-consultants on the fee schedules. Due to the wide variety of work that may arise, the City reserves the right to negotiate items not specified in the fee schedule or delete certain listed items.

Please note that all craft/trade positions that are under the purview of the DIR are required to be paid prevailing wages and will be required to submit a minimum monthly certified payroll reports. For more information, refer to Section 10, Subsection "R" "Prevailing Wage Requirements."

The sealed envelope from a selected firm will be opened after the selection process is completed. The City reserves the right to review the fee schedule and request for changes during contract negotiations.

All billing staff rates shall be fully burdened to include labor, benefits, taxes, overhead, profit, healthcare benefit surcharges, minimum compensation accountability surcharges, call out surcharges, other surcharges, costs for obtaining insurance and bonds, employee fringe benefits, employee paid time off, employee training, safety equipment, personnel protective equipment (PPE), support and administrative services and other ancillary charges.

Billing rates for field inspections and laboratory testing (unit pricing) are to include associated labor, travel costs, testing equipment, taxes, insurance, and overhead and profit. Minimum hourly billings and travel time will not be permitted. Billings for field inspection work will be based on actual hours on-site only.

Rates listed in the Agreement shall be one single rate reflecting 2010 billing rates and should be valid for at least one year after the award of contract. The selected Proposer will only be allowed to escalate its 2010 billing rates based on the annual percentage change of the Consumer Price Index (CPI) for the San Francisco Bay Area for Urban Wage Earners and Clerical Works, and shall be authorized in accordance with Section 48 (Modification of Agreement). **The billing rate for each listed individual may not exceed the lowest rate charged to any other government entity.** The City reserves the right to audit material that allows for verification of the accuracy of project invoices (e.g. project billing records, accounting records, time sheets, etc.)

Information to be filled out as applicable for prime consultant(s) and for each sub-consultant listed in HRC Form 2A.

Name of prime consultant or sub-consultant: _____

Overhead rate*: _____%

* An audited rate is preferable but not required. Provide an itemized percentage breakdown of the items that are accounted in the overhead rate. Administrative and clerical support services that are working at the home office are considered part of overhead.

Fringe rate (salary burden): _____%

Fully burdened staff billing rates to be calculated as follows:

Billing rate = DL * (1+ FR + OH) * 1.1 = \$ _____/hour

Where: DL = Direct Labor (base rate)
 FR = Fringe (salary burden)
 OH = Overhead rate
 1.1 = Profit factor

Note: Overtime rate = Fully Burdened Staff Billing Rates x 1.5

In general, overtime rates will not be allowed for this scope of work unless with prior agreement with DPW and with approval prior to execution of the work.

Fully burdened staff billing rates/hour for professional positions (categories of positions) as indicated in table format below. If a position is not applicable, indicate 'Not applicable'. If a position is not listed, utilize 'Other' and describe the position.

Position	Direct Labor Rate (\$/hr)	Overhead Rate %	Fringe (Salary Burden, %)	Billing Rate (\$/hr)
President/Principal				
Project Manager				
Lead Inspector of Record				
Inspector of Record				
Contract Administrator				
Project Coordinator				
Administrative Supervisor				
Administrative Clerical Support				
Other (describe)				

The following rates shall apply for all other services and charges, and remain in effect throughout the term of the contract for both the prime consultant and all sub-consultants:

<i>Services</i>	<i>Rates/Schedule</i>
Sub-consultant work, including outside firm laboratory analytical rates	Cost plus 5% (for a maximum of two tiers of sub-consultants)
Equipment to be purchased and turned over to the City	Cost plus 5% (for a maximum of two tiers of sub-consultants)
Meal expenses (including traveling)	Not reimbursable
Bridge Tolls	Not reimbursable
Parking Fees	Not reimbursable
Lodging	Not reimbursable without prior agreement
Air/taxi/shuttle/rail fares	Not reimbursable without prior agreement
Reproduction	At cost
Other direct costs	At cost
Travel	The Internal Revenue Service (IRS) standard mileage rate for business use of an automobile. No markup applies. This rate is subject to change annually. Travel expenses will be reimbursed only when services requested by the City require the Consultant to travel outside of the San Francisco Bay Area Nine Counties and only with prior approval. Expenses associated with traveling to and from prime consultant's offices, sub-consultants' offices, and home to the Project Site are not reimbursable regardless of distance or location.

Travel Expenses:

If the services performed under this agreement require travel, and the Department of Public Works (DPW) allows its reimbursement (if agreed to in writing prior to initiation of work), then its reimbursable costs will be based on the following. Consultants will be expected to obtain the lowest published routine fare for travel by the most **efficient, direct, and economical mode of transportation** required by the occasion:

- A. Travel between the Contractor's office, and/or any Sub-consultant's office, and/or Home, and/or the Project Site.

Travel time and travel expenses incurred by the Consultant and/or its Sub-consultants for travel between the Contractor's regular work site, and/or any Sub-consultant's regular work site, and/or Home, and/or the Project Site shall be considered part of the Consultant's and/or Sub-consultant's overhead and will not be reimbursed by the City, regardless of the location of the Consultant's or Sub-consultant's regular work sites.

- B. Required Travel Outside the Nine Bay Area Counties

If the needs of the project require the Consultant and/or its Sub-consultant to travel outside of the nine Bay Area counties (Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma), the City will reimburse the Consultant and/or Sub-consultant for the actual travel expenses incurred to and from their regular work site(s). If the Consultant and/or

Sub-consultant maintain their regular work site(s) outside of San Francisco, reimbursement will be limited to the lesser of (1) the actual expenses incurred to and from the regular work site, or (2) the equivalent travel expenses to and from San Francisco.

The associated Travel Time will be similarly reimbursed – the lesser of (1) the actual travel time incurred to and from the regular work site, or (2) the equivalent travel time to and from San Francisco.

C. Itemizing Reimbursable Expenses

In addition to the conditions set forth in paragraphs A. and B. (above), reimbursable travel expenses are subject to all of the conditions set forth below. Receipts must be included in reimbursements requests:

1. All travel must be approved in advance by the City in writing.
2. The City will reimburse only for travel expenses actually incurred. Reimbursable travel expenses are as follows:
 - a. Lodging will be reimbursed based on actual expenditures with a not-to-exceed (NTE) amount equal to the federal maximum lodging and per diem rates by locality. Federal rates for continental USA and maximum travel per diem allowances effective October 1, 2009 are shown on the U.S. Government Administration Services (GSA) website; federal rates for future years may also be shown within this website: <http://www.gsa.gov>.
 - b. Meal expenses are not reimbursable.
 - c. Air travel fares shall be based on lowest Economy Class ticket prices and will be reimbursed based on actual expenditures. Business, First Class, and Upgrades are not reimbursable. Air travel itinerary is required to be submitted with travel claim documentation. If airline charges for checked luggage, reimbursable will be for the cost of first checked bag only. Additional baggage check-in costs will be reimbursed with justification explaining the business need for extra luggage.
 - d. Taxi, shuttle, rail, and rental car fares will be reimbursed based on actual expenditures. Recommended options are public transportation, shuttle, or taxi. Rail expenses shall be based on lowest Economy Class ticket prices (or equivalent.) Rental car expenses shall be based on the rate for either the Economy or Compact class of car or its equivalent. No upgrades on these forms of transportation will be reimbursed. If using taxi, maximum reimbursement is \$50 each way, including tip, up to \$100 total for the related travel. If a personal car is used, mileage is reimbursed up to \$15 each way, maximum \$30 total for the related travel. For overnight travel in which the Consultant uses personal or rental vehicle, maximum reimbursement for overnight hotel parking is limited to \$20 per day.
 - e. The Internal Revenue Service (IRS) standard mileage rate for business use of a non-rental automobile applies to this Contract. This rate is subject to change annually.
 - f. Tolls and parking fees associated with approved travel will be reimbursed based on the actual cost.
 - g. Original receipts are required for all travel expense reimbursements, with the exception of Toll/Bart/Muni/parking meter/public telephone.

Equipment Rental

The following shall apply and remain in effect throughout the term of the contract for both the Consultant and all levels of sub consultants.

Compensation for equipment rentals (not itemized in the Calculation of Charges) shall be paid for at the rates listed in the Labor Surcharge and Equipment Rental Rates issued by the State of California, Business Transportation, and Housing Agency, Department of Transportation (Caltrans) Construction Program, if listed, plus a 5% mark up.

Compensation for equipment rentals (not itemized in the Calculation of Charges as well as not listed in the Labor Surcharge and Equipment Rental Rates issued by the State of California, Business Transportation, and Housing Agency, Department of Transportation (Caltrans) Construction Program) shall be paid for at the rates negotiated and listed in the individual task proposal, plus a 5% mark up.

Equipment Owned

Provide a list of "direct reading" instruments own that might be used as part of this contract.

The following shall apply and remain in effect throughout the term of the contract for both the Contractor and all levels of sub Contractors.

The Consultant shall not be compensated for usage of equipment it owns. This cost shall be absorbed as part of its overhead.

If the Consultant owns its own laboratory, it will not be allowed to add on the 5% mark up.

Equipment Purchase

The following shall apply and remain in effect throughout the term of the contract for both the Consultant and all levels of sub Consultants.

If equipment is needed to be purchased for a project, DPW will work with the Consultant to develop specifications for the equipment. DPW, with assistance from the Consultant, will work with the City's Office of Contract Administration (OCA) on review and approval of the specifications and the procurement of the equipment. The Consultant shall comply with the guidelines of DPW and OCA before purchasing the equipment. Such equipment may be used by the Consultant to conduct requested services, e.g., sampling for environmental testing. At the end of the contract term or at any time requested by the City, the equipment shall be returned to the City in fully operable condition. The Consultant is responsible to ensure that the equipment has been serviced and/or calibrated within the past 6 months prior to returning to the City. Consultant will be allowed to include a 5% markup over the invoice price.

Non-reimbursable Items

1. The following non-reimbursable items are considered part of the work to provide services. Costs associated with these items are considered to be included in the staff billing rate. They shall remain in effect throughout the term of the contract for the prime consultant and all sub-consultants:

- | | |
|--|---|
| Office supplies | Photocopies |
| Office equipment | Safety equipment and supplies |
| Computers (Desktops/laptops) | Testing Equipment |
| Telephones calls | Tools |
| Cell phone and calls | Parking (off-site parking will be provided by Contractor) |
| Faxes | Respirators and PPE |
| Cameras | First Aid Kits |
| Sampling media (cassettes, tubing, filters, etc) | Employee training and medical exams |

2. HAZWOPER Training: When needed, the Consultant shall provide in sufficient numbers of properly trained personnel who may come in contact with, may be exposed to, disturb, operate equipment or otherwise work around hazardous or contaminated materials, water, and soils. This training for each such employee shall be the 40-hour Hazardous Waste Operation and Emergency Response (HAZWOPER) training and certification and the associated 8-hour HAZWOPER refresher training (as per Sections 5192 and 5144 of Title 8, CCR and Title 29 CFR, Sections 1910.120 and 1910.134), and shall be certified to wear appropriate personnel protective equipment (i.e. respirators, etc.). The City will not pay for the costs incurred by the Consultant or its sub-consultant to provide properly trained personnel, training costs of the Consultant's workers, hiring of required personnel, as such will be considered incidental.

See following Appendix B – Exhibit 1 Consultant Fee Schedules (attachment) for Consultant's Billing Rates.

Appendix B – Exhibit 1

Consultant Fee Schedules

Name of prime consultant or sub-consultant: Montgomery Corporation
 Overhead rate*: 185% (includes fringe rate) %

* An audited rate is preferable but not required. Provide an itemized percentage breakdown of the items that are accounted in the overhead rate. Administrative and clerical support services that are working at the home office are considered part of overhead.

Fringe rate (salary burden): See above %

Fully burdened staff billing rates to be calculated as follows:

Billing rate = DL * (1+ FR + OH) * 1.1 = \$ _____/hour

Where: DL = Direct Labor (base rate)
 FR = Fringe (salary burden)
 OH = Overhead rate
 1.1 = Profit factor

Note: Overtime rate = Fully Burdened Staff Billing Rates x 1.5

In general, overtime rates will not be allowed for this scope of work unless with prior agreement with DPW and with approval prior to execution of the work.

Fully burdened staff billing rates/hour for professional positions (categories of positions) as indicated in table format below. If a position is not applicable, indicate 'Not applicable'. If a position is not listed, utilize 'Other' and describe the position.

<i>Position</i>	<i>Direct Labor Rate (\$/hr)</i>	<i>Overhead Rate (%)</i>	<i>Fringe (Salary Burden, %)</i>	<i>Billing Rate (\$/hr)</i>
President/Principal	56.11	185%	-	175.90
Lead Inspector of Record	52.73	185%	-	165.31
Inspector of Record	52.73	185%	-	165.31
Contract Administrator	30.76	185%	-	96.43
Project Coordinator	31.74	185%	-	99.50
Administrative Supervisor	30.76	185%	-	96.43
Administrative/Clerical Support	29.34	185%	-	91.98
Other (describe)				

Appendix B – Exhibit I

Consultant Fee Schedules

Name of prime consultant of sub-consultant: Chaves & Associates
 Overhead rate*: 164.4% (includes fringe rate) %

* An audited rate is preferable but not required. Provide an itemized percentage breakdown of the items that are accounted in the overhead rate. Administrative and clerical support services that are working at the home office are considered part of overhead.

Fringe rate (salary burden): See above %

Fully burdened staff billing rates to be calculated as follows:

Billing rate = DL * (1+ FR + OH) * 1.1 = \$ _____ /hour

Where: DL = Direct Labor (base rate)
 FR = Fringe (salary burden)
 OH = Overhead rate
 1.1 = Profit factor

Note: Overtime rate = Fully Burdened Staff Billing Rates x 1.5

In general, overtime rates will not be allowed for this scope of work unless with prior agreement with DPW and with approval prior to execution of the work.

Fully burdened staff billing rates/hour for professional positions (categories of positions) as indicated in table format below. If a position is not applicable, indicate 'Not applicable'. If a position is not listed, utilize 'Other' and describe the position.

<i>Position</i>	<i>Direct Labor Rate (\$/hr)</i>	<i>Overhead Rate (%)</i>	<i>Fringe (Salary Burden, %)</i>	<i>Billing Rate (\$/hr)</i>
President/Principal	59.09	164.6%	-	171.99
Project Manager	59.09	164.6%	-	171.99
Document Control Manager	36.36	164.6%	-	105.83
Document Control Tech I	29.78	164.6%	-	86.68
Document Control Tech II	28.36	164.6%	-	82.54
Administrative Supervisor	36.36	164.6%	-	105.83
Administrative/Clerical Support	22.72	164.6%	-	66.13
Other (describe)				

