

**ALPHA PLAN-GS \$MART (TAX EXEMPT),  
FOR THE CITY AND COUNTY OF SAN FRANCISCO,  
TERMS AND CONDITIONS (VERSION 5.0) DATED NOVEMBER 1, 2015**

The following terms and conditions are applicable to the City and County of San Francisco (the “*Purchaser*”), acting by and through the State of California’s Alpha Plan (the “*Plan*”) offered in the Golden State Financial Marketplace (“*GS \$Mart*”).

**PURPOSE OF AGREEMENT**

The purpose of the Plan is to prescribe the financing provisions, covenants and payment schedules for installment purchases to be made by the Purchaser for specific Assets that may include (but are not limited to) goods and/or services, equipment and software and have a useful life longer than one year. The Purchaser does not have any obligation to pay a Supplier for any Asset before the Purchaser accepts that Asset. In addition, interest will not begin to accrue, and the Purchaser will not be obligated to pay a Lender any interest charges, with respect to any Asset until the Purchaser has accepted that Asset, unless escrow funding pursuant to Section VIII.B is implemented. Upon the incorporation of a Lender’s rate quote into a Contract, which the Lender has submitted in response to the related Request for Rate Quote, the Lender shall be deemed to have entered into such Contract and made the Lender’s agreements, representations and warranties as set forth in this Plan.

**PLAN PROVISIONS**

**I. Definitions**

The following terms shall have the respective meanings for purposes of each Contract:

“*Assets*” means those assets described in such Contract that are eligible for financing under applicable State law.

“*Certification Form*” means the Alpha Plan, Certification Form used by the Purchaser from time to time in connection with GS \$Mart.

“*Code*” means the Internal Revenue Code of 1986, as amended.

“*Commencement Date*” means the date when interest commences to accrue under such Contract, which is the first date on which (a) the Purchaser has accepted the Assets under such Contract as evidenced by the related Certification Form and the Lender, at the Purchaser’s direction and on its behalf, pays the costs for such Assets to the Supplier in exchange for execution and delivery of such Contract or (b) the Lender has deposited funds into an Escrow Fund as provided in Section VIII.B.

“*Contract*” means, with respect to Assets financed for a Purchaser in each separate transaction, the purchase order/agreement formed by the offer and acceptance between the

Purchaser and the Lender through GS \$Mart, the related Certification Form, the purchase order/agreement that the Purchaser enters into with the Lender that incorporates by reference the Plan, the Lender's rate quote, the payment schedule and scheduled provisions and notes and any Rider or Addendum incorporated in the purchase order/agreement by reference.

*"Contract Term"* means the Original Term and all Renewal Terms under a Contract.

*"Escrow Agreement"* is defined in Section VIII.B.

*"Escrow Fund"* is defined in Section VIII.B.

*"GS \$Mart"* means the State of California Department of General Services Golden State Financial Marketplace Program, as structured, administered and maintained under Section 14930 *et seq.* of the Government Code, acting on behalf of the Purchaser.

*"Lender"* means (a) the entity that, at the Purchaser's direction and on its behalf, pays the costs for the Assets under a Contract to the Supplier, and any successor to such entity; and (b) the Permitted Assignee with respect to a Contract from and after assignment pursuant to Section X.A., and any successors to such Permitted Assignee.

*"Non-Appropriation Event"* is defined in Section III.

*"Original Term"* means the period from the Commencement Date for a Contract until the end of the Purchaser's fiscal year in effect at such Commencement Date.

*"Permitted Assignee"* means (a) an affiliate of a Lender, (b) a bank, insurance company or similar financial institution or its affiliates or (c) any other entity approved by GS \$Mart, *provided* that each such assignee shall be an entity that the transferor Lender reasonably believes is a "qualified institutional buyer" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an "accredited investor" as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended.

*"Renewal Term"* means each successive term having a duration that is coextensive with the Purchaser's fiscal year.

*"Supplier"* means the entity that sells and delivers Assets to the Purchaser that are financed under a Contract.

## **II. Contract Term; Installment Payments**

A. The Purchaser enters into each Contract on its Commencement Date under and pursuant to the laws of the State of California to finance its acquisition and installment purchase of the Assets described in such Contract. The Contract Term for each Contract may be continued, solely at the option of the governing body of the Purchaser, at the end of its Original Term for the first Renewal Term and at the end of the first Renewal Term and each succeeding Renewal Term for the next succeeding Renewal Term up to the maximum Contract Term set

forth in such Contract. The exercise by the Purchaser of its option to continue each Contract for a Renewal Term shall be evidenced by, and the Contract Term shall be automatically extended, upon the successive appropriation by the Purchaser's governing body of amounts sufficient to pay installment payments and other amounts payable under such Contract during the Purchaser's next succeeding fiscal year until all installment payments under such Contract have been paid in full, unless the Purchaser terminates such Contract pursuant to Section III or Section VI.A. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the installment payments shall be as provided in the applicable Contract. The Purchaser shall have no obligation under a Contract after the first to occur of the date on which (a) such Contract terminates pursuant to Section III, (b) all installment payments and any other amounts due under such Contract have been paid in full pursuant to Section II.B or (c) such Contract terminates pursuant to Section VI.A or Section XV upon prepayment in full of installment payments and any other amounts due under such Contract.

B. The Purchaser shall promptly pay installment payments as described in the payment schedule portion of each Contract, in lawful money of the United States of America, to the Lender under such Contract on the dates and in the amounts as provided in such Contract. Installment payments consist of principal and interest portions as detailed on the payment schedule incorporated into each Contract. Except as provided in Section III (regarding Non-Appropriation), the Purchaser's obligations to make installment payments under each Contract and to perform and observe the other covenants and agreements contained in each Contract shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense. It is reasonably expected that installment payments under each Contract will be paid by prompt means as due from annual appropriations of the governing body of the Purchaser. The remaining general funds of the Purchaser will not be used to make such payments and no other moneys are pledged to any Contract or reasonably expected to be used to pay principal and interest portions of installment payments under any Contract.

C. Each Lender and the Purchaser understand and intend that the Purchaser's obligation to pay installment payments under each Contract shall constitute a current expense of the Purchaser payable solely from funds budgeted and appropriated by the Purchaser's governing body for that purpose and shall not in any way be construed to be a debt of the Purchaser in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the Purchaser, nor shall anything in the Plan or in a Contract constitute a pledge of the full faith and credit or taxing power of the State of California, the Purchaser or any other local government entity of the State of California or a pledge of the general tax revenues, funds or monies of the State of California, the Purchaser or any other local government entity of the State of California.

### **III. Non-Appropriation**

The Purchaser is obligated only to pay such installment payments and other amounts under each Contract as may lawfully be made from funds budgeted and appropriated for that purpose. The Purchaser incurs no obligation under any Contract for any period of time for which funds are not budgeted and appropriated by its governing body or are otherwise legally available

for such purpose. If Purchaser's governing body fails to appropriate sufficient funds in any Purchaser fiscal year to pay installment payments and other amounts when due under a Contract during the next succeeding fiscal year (a "*Non-Appropriation Event*"), then (a) the Purchaser shall use reasonable efforts to deliver written notice of such Non-Appropriation Event to the Lender under the affected Contract at least 30 days prior to the end of the then current fiscal year, but failure to deliver such notice shall not extend the Contract Term under the affected Contract; (b) on or before the Return Date, the Purchaser shall cease use of the Assets covered by the affected Contract and peaceably remove and deliver all (but not less than all) of such Assets to the Lender under the affected Contract, at the Purchaser's expense (from legally available funds), at the location in the State of California to be specified by such Lender and in the condition required by Section IX.A; and (c) the affected Contract shall terminate on the Return Date without penalty or expense to the Purchaser, *provided* that the Purchaser shall pay all installment payments and other amounts payable under the affected Contract for which funds shall have been appropriated. "Return Date" means the last day of the fiscal year for which appropriations were made for the installment payments due under the affected Contract. If an Escrow Fund has been established for a Contract that is terminated as the result of a Non-Appropriation Event, the Lender under the affected Contract may terminate the related Escrow Agreement and apply any moneys and investments then held in the Escrow Fund thereunder to the installment payments scheduled under the affected Contract.

#### **IV. Best Efforts for Funding**

The Purchaser currently intends, subject to Section III, to continue the Contract Term for each Contract through its Original Term and its scheduled Renewal Terms and to pay the installment payments and other amounts thereunder. The Purchaser will use its best efforts to obtain funding for the Assets purchased under each Contract, *provided* that the decision whether or not to budget and appropriate funds or to extend a Contract for any Renewal Term is within the sole discretion of the governing body of the Purchaser.

#### **V. Opinion of Counsel Concerning Contract Validity**

The Purchaser agrees to deliver to the Lender under a Contract on the Commencement Date a signed copy of a written Opinion of Counsel to the Purchaser addressed to the Purchaser to the effect that:

A. This purchase order/agreement has been duly authorized, executed and delivered by the Purchaser acting through its duly qualified elected or appointed officers or agents, and

B. This purchase order/agreement is a legal, valid and binding obligation of the Purchaser and is enforceable against the Purchaser in accordance with its terms and conditions.

## **VI. Prepayment Option; No Prepayment Penalty; No Termination for Convenience**

A. Except for certain Contracts for computer-related services, which are not subject to prepayment, the Purchaser may elect to prepay all or any portion of the unpaid balance of any Contract at any time, upon at least 45 days prior written notice to the Lender, at a prepayment price equal to the principal amount to be prepaid plus accrued interest thereon to the prepayment date, but without premium or any other charge. Notwithstanding the foregoing, a prepayment premium may be specified in a Contract if the Purchaser so agrees. Partial prepayment shall be applied to reduce the principal portion of installment payments under the affected Contract in inverse order of the scheduled installment payments. Within 30 days after such prepayment, the Lender under the affected Contract shall prepare and deliver to the Purchaser a revised payment schedule that shows the remaining installment payments after giving effect to such prepayment as provided in this Section VI.A.

B. Notwithstanding any other provision of any Contract, there shall be no termination for convenience by the Purchaser of installment payments due under any Contract until such time as the full amount due is paid.

## **VII. Title and Security Interest; Public Purpose of Assets**

A. During the Contract Term under each Contract, and so long as the Purchaser is not in default under Section XVI, all right, title and interest in and to each of the Assets under such Contract shall be vested in the Purchaser immediately upon its acceptance of the Assets as evidenced by delivery of the related Certification Form, subject to the terms and conditions of the applicable Contract. Upon the occurrence of an Event of Default under a Contract as provided in Section XVI or upon termination of a Contract pursuant to Section III, full and unencumbered legal title to the Assets under such Contract shall, at the option of the affected Lender, pass to such Lender, and the Purchaser shall have no further interest therein except for any excess disposition proceeds as provided in Section XVII.B. In addition, upon the occurrence of such an Event of Default under a Contract or such termination of a Contract, (i) the Purchaser shall execute and deliver to the Lender under such Contract such documents as such Lender may reasonably request to evidence the passage of such legal title to such Lender and the termination of the Purchaser's interest therein and (ii) upon request by the Lender, the Purchaser shall deliver possession of the Assets under such Contract to such Lender in accordance with Section III or Section XVII, as applicable. Upon payment of all amounts due and owing under a Contract in accordance with Section II.B or prepayment in whole or in part of affected Assets under Section VI.A or Section XV, the security or other interest of the Lender under the affected Contract in the Assets or such affected Assets thereunder shall terminate, and such Lender shall execute and deliver to the Purchaser such documents as the Purchaser may request to evidence the termination of the security or other interest in the Assets or such affected Assets subject to the applicable Contract.

B. To secure the payment and performance of all of the Purchaser's obligations under each Contract, upon entering into such Contract on its Commencement Date, the Purchaser grants to the Lender under such Contract a security interest constituting a first and exclusive lien

on (i) the Assets subject to such Contract (other than proprietary software licenses), (ii) moneys and investments held from time to time in the Escrow Fund if an Escrow Fund is established for such Contract and (iii) any and all proceeds of any of the foregoing. The Purchaser agrees to execute (to the extent required) and deliver such additional documents as may be required or advisable under applicable State of California law, in form satisfactory to the Lender, which the Lender deems necessary or appropriate to establish and maintain its security interest in the Assets under the affected Contract, the Escrow Fund (if any) and the proceeds of any of the foregoing, including, without limitation, such financing statements with respect to personal property under Article 9 of the California Commercial Code and treating such Article 9 as applicable to entities such as the Purchaser. The Assets under each Contract are and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which they may be situated.

C. Pursuant to each Contract, the Purchaser is entitled to acquire on an installment purchase basis the Assets under such Contract in consideration for the obligations of the Purchaser under such Contract. During the Contract Term under each Contract, the Assets thereunder shall be used only for the purpose of performing essential governmental or proprietary functions of the Purchaser.

### **VIII. Delivery and Acceptance by the Purchaser; Escrow Funding Alternative**

A. When the Assets listed in a Contract have been delivered to the Purchaser and inspected and found to be in conformance with such Contract, the Purchaser shall immediately accept such Assets and evidence such acceptance by executing and delivering to the Lender a Certification Form to the effect that the Assets described in such Contract have been delivered to the Purchaser, have been inspected, have been found to be in conformance with such Contract and in good working order and are, therefore, fully and finally accepted by the Purchaser. Upon delivery of such executed Certification Form with respect to the affected Contract to the Lender, as between the Lender and the Purchaser, the Assets shall be deemed to have been unconditionally accepted by the Purchaser for all purposes of the applicable Contract. The Lender under the applicable Contract shall pay to the Supplier as directed by the Purchaser on the Commencement Date for such Contract the purchase price for the Assets thereunder in an amount equal to the aggregate principal portion of installment payments under the applicable Contract, unless the Lender and the Purchaser otherwise agree in the related payment schedule.

B. As an alternative to acceptance of the Assets and payment by the Lender of the purchase price therefor on behalf of the Purchaser under a Contract as provided in Section VIII.A, the Lender and the Purchaser may agree with respect to a Contract and the Assets to be acquired and financed thereunder to enter into an escrow agreement (an "*Escrow Agreement*"), dated the Commencement Date, among the Lender, the Purchaser and the escrow agent therein identified, relating to the creation and administration of an escrow fund (an "*Escrow Fund*"). On the Commencement Date of a Contract for which the escrow funding alternative is implemented, the Lender shall deposit funds into the related Escrow Fund on such Commencement Date for payment of the costs to purchase and acquire the Assets under such Contract, and such funds (including investment earnings thereon) shall be disbursed in

accordance with the applicable Escrow Agreement. Investment earnings on amounts in the Escrow Fund shall accrue to the benefit of the Purchaser.

## **IX. Use; Maintenance; Location**

A. The Purchaser shall not install, use, operate or maintain the Assets under any Contract improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by the Contract. The Purchaser shall obtain all permits and licenses, if any, necessary for the installation and operation of the Assets under each Contract. In addition, the Purchaser agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body. The Purchaser agrees that it will, at the Purchaser's own cost and expense, maintain, preserve and keep the Assets under each Contract in good working order, condition and repair. Any Assets financed under a Contract shall be eligible for maintenance by the Supplier, or its agent, upon installation and acceptance by the Purchaser. No Lender shall have any responsibility to maintain, repair or make improvements or additions to the Assets under a Contract.

B. The Purchaser shall not alter Assets under the applicable Contract or install any accessory, equipment or device on an Asset if that would impair any applicable warranty, the originally intended function or the value of the Assets. All repairs, accessories, equipment and devices furnished, affixed to or installed on any Asset, excluding temporary replacements, shall thereupon become subject to the security interest of the Lender under the related Contract.

C. Once installed, no item of the Assets (other than motor vehicles) will be moved from the location specified for it in the related Contract without the Lender's prior written consent, which consent shall not be unreasonably withheld. Assets that consist of motor vehicles may be moved from base locations and used by the Purchaser in the conduct of its operations as the Purchaser determines necessary or desirable, without notice to or consent of the Lender at any time.

## **X. Assignment**

A. The Lender's right, title and interest in and to a Contract (or interests therein) and any related Escrow Agreement may be assigned and reassigned by the Lender at any time and from time to time to one or more Permitted Assignees with written notice to the Purchaser that discloses the name and address of the assignee and, if the assignor Lender does not retain servicing, with the prior written approval of GS \$Mart, which approval may be withheld, conditioned or delayed in the sole discretion of GS \$Mart. Notwithstanding anything in this Section X.A to the contrary, the Lender's right, title and interest in and to a Contract (or interests therein) and any related Escrow Agreement shall not be assigned or reassigned by the Lender at any time in violation of the Darfur Contracting Act of 2008 (Public Contract Code Section 10475 *et seq.*), the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*), Section 10490 of the Public Contract Code as applied to the Republic of the Congo or Section 10286.1 of the Public Contract Code that generally prohibits contracts with an "expatriate corporation" or its subsidiaries. The Lender under a Contract shall provide to the

Purchaser certification of the Lender's compliance with any or all such Section of the Public Contract Code promptly after the Purchaser's request for such certification. The Purchaser shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. For this purpose, the Purchaser appoints the initial Lender under a Contract to act as its registration agent, which appointment the Lender accepts by entering into each Contract and agrees on the Purchaser behalf to maintain such record of all assignments of the related Contract. The Purchaser and the Lender agree that any assignment of a Contract as herein provided shall not relieve the Supplier from its performance obligations with respect to the Assets under a Contract.

B. None of the Purchaser's right, title and interest in, to and under any Contract or any portion of the Assets listed in any Contract or in any Escrow Fund may be assigned, subleased, or encumbered by the Purchaser for any reason without obtaining prior written consent of the Lender, which consent may be withheld, conditioned or delayed in the sole discretion of the Lender. Any purported assignment, sublease or encumbrance without the Lender's prior written consent shall be null and void.

## **XI. No Representation or Warranties by Lender**

The Purchaser has selected both the Assets and the Supplier of the Assets under the Contract prior to soliciting rate quotes from qualified Lenders under GS \$Mart. The Purchaser agrees that the Lender, not being the Supplier, manufacturer or dealer of the Assets, has not made any, and makes no, representation or warranty, directly or indirectly, express or implied, of any kind as to any matter whatsoever, including, without limitation, as to title, fitness, quality, design, condition, capacity, suitability, durability, operation, merchantability, performance, fitness for any particular purpose or as to the material or workmanship of any item of the Assets. As between the Purchaser and the Lender, the Purchaser acquires the Assets by installment purchase under each Contract "as is," "where is" and "with all faults." The Lender, by entering into a Contract, specifically disclaims any and all representations and warranties of any kind. No defect in, or unfitness of, the Assets shall relieve the Purchaser of the obligation to pay installment payments or to pay any other amount or to perform any other obligation of the Purchaser under or arising from any Contract. **THE PURCHASER SHALL LOOK SOLELY TO THE SUPPLIER AND/OR MANUFACTURER OF THE ASSETS FOR ANY CLAIM BASED UPON THE QUALITY OR CONDITION OF THE ASSETS, THEIR PERFORMANCE, SPECIFICATIONS, MERCHANTABILITY OR FITNESS FOR USE, AND THE PURCHASER'S OBLIGATIONS TO THE LENDER UNDER ANY CONTRACT SHALL NOT IN ANY MANNER BE AFFECTED THEREBY, INCLUDING (WITHOUT LIMITATION) THE PURCHASER'S OBLIGATIONS TO PAY THE LENDER THE INSTALLMENT PAYMENTS AND OTHER AMOUNTS PAYABLE UNDER EACH CONTRACT. THE LENDER SHALL NOT BE LIABLE TO THE PURCHASER OR ANY THIRD-PARTY FOR ANY LOSS, DAMAGE, INJURY OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY ANY ASSETS OR BY ANY DEFECT OR DEFECTS THEREIN OR BY THE USE OR MAINTENANCE THEREOF, OR BY THE REPAIR, SERVICING OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY THEREOF, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED. THE LENDER SHALL HAVE NO OBLIGATION TO MAINTAIN, INSTALL, ERECT, LET, ADJUST OR SERVICE THE ASSETS UNDER ANY CONTRACT.**



**THE LENDER SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES HOWSOEVER ARISING.**

## **XII. Tax Covenants and Representations**

A. The Purchaser agrees that it will not take any action that would cause the interest portion of installment payments under any Contract to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in a timely manner, any action which omission would cause the interest portion of installment payments under a Contract to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes. The Purchaser agrees to (i) complete and file in a timely manner an information reporting return with respect to each Contract as required by Section 149(e) of the Code; (ii) rebate an amount equal to excess earnings on any Escrow Fund created with respect to a Contract to the federal government if required by, and in accordance with, Section 148(f) of the Code, and make the determinations and maintain the records required by the Code; and (iii) so long as any installment payments under a Contract remain unpaid, moneys on deposit in any Escrow Fund will not be used in a manner that will cause such Contract to be classified as an “arbitrage bond” within the meaning of Section 148(a) of the Code.

B. The Purchaser represents to the Lender on the Commencement Date of each Contract that (i) neither the Purchaser nor any department or agency of the Purchaser has on hand any property, including cash and securities, that is legally required or otherwise restricted (no matter where held or the source thereof) to be used directly or indirectly to purchase the Assets under the related Contract; (ii) the Purchaser has not and will not establish any funds or accounts (no matter where held or the source thereof) the use of which is legally required or otherwise restricted to pay directly or indirectly installment payments under a Contract; (iii) the Purchaser does not intend to sell or otherwise dispose of the Assets or any interest therein prior to the conclusion of the Contract Term of a Contract; (iv) the payment of the installment payments or any portion thereof under each Contract is not directly or indirectly (a) secured by any interest in property used or to be used in any activity carried on by any person other than a State or local governmental unit or payments in respect of such property or (b) on a present value basis, derived from payments (whether or not to the Purchaser) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a State or local governmental unit; (v) the Assets will not be used, directly or indirectly, in any activity carried on by any person other than a State or local government unit; (vi) no portion of the purchase price for the Assets will be used, directly or indirectly, to make or finance loans to any person other than the Purchaser; (vii) the Purchaser has not entered into any management or other service contract with respect to the use and operation of the Assets; (viii) the Purchaser has entered into, or will enter into, each Contract for the purpose of purchasing and acquiring the Assets and not for the purpose of refinancing any outstanding obligation of the Purchaser more than 90 days in advance of its payment or prepayment date; and (ix) the purchase price for the Assets has been or will be paid directly by the Lender to the Supplier thereof, and no portion of the purchase price for the Assets has been or will be paid to the Purchaser as reimbursement for any expenditures paid by the Purchaser more than 60 days prior to the Commencement Date of

the applicable Contract or, if earlier, more than 60 days prior to any official action taken to evidence an intent to finance the Assets on a federally tax-exempt basis.

C. The Lender and the Purchaser intend that each Contract constitute a “conditional sale” for federal income tax purposes and, therefore, the Lender and the Purchaser intend that the Purchaser be considered the owner of the Assets under each Contract for federal income tax purposes.

### **XIII. Lender’s Representations**

In connection with entering into a Contract, the Lender hereby represents and warrants to the Purchaser that:

A. The Lender is a lender that regularly extends credit by making or purchasing loans in the form of State and local government obligations (such as a Contract); has knowledge and experience in financial and business matters that make it capable of evaluating the risks associated with entering into the Contract; and has the ability to bear the economic risk of extending the credit evidenced by the Contract.

B. The Lender has conducted its own investigation of the financial condition of the Purchaser, the purpose for which the Contract is being entered into and the source of payment under the Contract, and has obtained such information regarding the Contract and the Purchaser and its operations and financial condition as the Lender deems necessary to make an informed investment decision with respect to entering into the Contract.

C. The Lender is entering into the Contract for the purpose of making a loan for its own account and without any present intention of distributing or selling any interest therein or portion thereof, *provided* that the Lender retains the right at any time to assign the Contract or any interest therein or portion thereof, subject to compliance with the requirements of Section X.A.

D. In accordance with Section II.C, the Lender understands and intends that the Purchaser’s obligation to pay installment payments under a Contract with the Lender constitutes a current expense of the Purchaser payable solely from funds budgeted and appropriated for that purpose, shall be subject to termination upon the occurrence of a Non-Appropriation Event pursuant to Section III and shall not in any way be construed to be a debt of the Purchaser in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the Purchaser, nor shall anything in such Contract constitute a pledge of the full faith and credit or taxing power of the State of California, the Purchaser or any other local governmental unit of the State of California or a pledge of the general tax revenues, funds or monies of the State of California, the Purchaser or any other local government unit of the State of California.

#### **XIV. Liens, Taxes, Other Governmental Charges and Utility Charges; Insurance**

A. The Purchaser shall at all times protect and defend, at its own cost and expense, its title in and to the Assets from and against all claims, liens and legal processes of its creditors and shall not create, assume, or voluntarily suffer to exist, any mortgage, pledge, encumbrance, security interest, lien or charge of any kind upon any Assets, except those created by a Contract.

B. The Purchaser shall pay promptly all applicable taxes and other governmental charges when levied or assessed upon any Assets, or Asset operation or use, or upon the Lender, in connection with a Contract (exclusive of taxes based on the Lender's net income).

C. The Purchaser shall pay all utility and other charges incurred in the use and maintenance of the Assets as the same may become due.

D. In the event that the Purchaser is not self-insured (as hereafter provided), the Purchaser shall keep the Assets fully insured against all risks of loss for not less than the greater of their full replacement value (without consideration for depreciation) or the total unpaid principal portion of installment payments as described in the payment schedule portion of the applicable Contract. The Purchaser shall also carry public liability insurance, both personal injury and property damage, covering the Assets, with a combined single limit in an amount acceptable to the Lender. All insurance shall be in a form, amount and with companies reasonably satisfactory to the Lender. The Lender shall be named as an additional insured with respect to all such liability insurance and loss payee with respect to all property and casualty insurance. The Purchaser shall pay the premiums therefor and deliver to the Lender evidence satisfactory to the Lender of such insurance coverage. Each insurer shall agree that it will give the Lender at least 30 days prior written notice of the effective date of any cancellation of, or material change in, such policy(ies). The proceeds of such insurance payable as a result of loss of, or damage to, the Assets shall be applied as required by the provisions of Section XV. If the Purchaser is self-insured with respect to personal property such as the Assets under an actuarially sound self-insurance program that is acceptable to the Lender, the Purchaser shall maintain during the applicable Contract Term such actuarially sound self-insurance program and shall provide evidence thereof in form and substance satisfactory to the Lender.

#### **XV. Destruction of Assets**

In the event that any Asset shall be lost, stolen, irreparably damaged or destroyed or otherwise rendered permanently unfit for use from any cause whatsoever prior to the payment in full of all the installment payments and other amounts under the Contract for the affected Assets, the Purchaser shall, subject to Section III and upon demand by the Lender, within 60 days of such demand, pay to the Lender a sum equal to the principal amount attributable to the principal portion of installment payments relating to the affected Assets *plus* accrued interest to the prepayment date, which shall constitute a partial or total prepayment of installment payments under the affected Contract. If the damage to or destruction of the affected Assets is such that the Assets may be replaced or restored to the condition described in Section IX and in lieu of any prepayment under the next preceding sentence, the Purchaser shall repair and replace such

Assets, but only from funds budgeted and appropriated for that purpose. The Purchaser shall advise the Lender promptly in writing whether the Purchaser intends to repair and replace the affected Assets in lieu of any such prepayment and shall advise the Lender promptly after such repair and replacement is completed.

## **XVI. Defaults**

Any of the following events shall constitute an “Event of Default” under a Contract:

A. The Purchaser shall fail to pay, in full, any sum payable by the Purchaser when due under such Contract following the Lender’s written notice of such failure that is delivered to the Purchaser and GS \$Mart.

B. The Purchaser shall fail to maintain insurance (including any self-insurance) as required in Section XIV.D.

C. The Purchaser shall, for more than 30 days after the Lender has notified the Purchaser in writing, fail to observe and perform any covenant, condition or agreement contained in such Contract on its part to be observed or performed, other than as referred to in A. and B. above.

D. Any bankruptcy, insolvency, moratorium or similar proceeding of any character shall be instituted by the Purchaser.

E. Any statement, representation or warranty by the Purchaser in or pursuant to any Contract shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made.

## **XVII. Remedies on Default**

If an Event of Default shall have occurred and continues under a Contract, the Lender may to the extent permitted by law:

A. Recover the balance of the amount owed under such Contract to the end of the then current Original Term or Renewal Term.

B. Enter any premises where the Assets under the affected Contract may be housed or otherwise located, subject to the Purchaser’s reasonable security requirements at the site, and take possession of (and title to) such Assets or render them unusable or require the Purchaser at the Purchaser’s expense to promptly return any or all of such Assets to the possession of the Lender at such place within the State of California as the Lender shall specify. Upon repossession or return of the Assets, the Lender will dispose of the Assets in a commercially reasonable manner. Any proceeds of the disposition shall be applied to amounts owed by the Purchaser for the Assets and any excess shall be paid to the Purchaser

C. The Lender may terminate any Escrow Agreement then in effect with respect to the affected Contract and apply any moneys and investments then held in the Escrow Fund thereunder to the installment payments scheduled under the affected Contract.

D. Take whatever action at law or in equity may appear necessary or desirable to enforce its rights under such Contract or as a secured party in any or all of the Assets and any related Escrow Fund.

E. Pursue any other remedy permitted at law or in equity.

No remedy herein conferred upon or reserved to the Lender is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under a Contract now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

### **XVIII. Closing Documents**

The Purchaser and the Lender will cooperate in reviewing and executing ministerial documentation reasonably required by the Lender in entering into each Contract, including the purchase contract and any resultant purchase order, as well as each of the following closing documents:

A. The Purchaser and the Lender shall agree on a bond counsel firm of nationally recognized standing to deliver its written opinion to the Purchaser and GS \$Mart on the Commencement Date for such Contract to the effect that the interest portion of installment payments is excludable from gross income of the owner of such Contract for federal income tax purposes, subject to the Purchaser's compliance with its covenants regarding maintenance of federal tax-exemption.

B. A signed Certification Form in form and substance customarily used by GS \$Mart.

C. Opinion of Counsel concerning Contract Validity.

D. Copy of completed and executed Internal Revenue Service Form 8038-G or Form 8038-GC, as applicable, and evidence of filing (when available).

E. Such other documents as the Purchaser or the Lender may reasonably request, including any certifications that the Purchaser may request the Lender to provide relating to the Lender's compliance with Sections of the Public Contract Code as provided in Section X.A.

## **XXIX. Nondiscrimination; Penalties**

- A. **Lender Shall Not Discriminate.** In the performance of this Agreement, the Lender agrees not to discriminate against any employee, City employee working with the Lender, applicant for employment with the Lender, 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.** The Lender 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 the City) and shall require all subcontractors to comply with such provisions. The Lender's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.
- C. **Nondiscrimination in Benefits.** The Lender, as of the date of this Agreement, does not and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by the City, 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, the Lender shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.
- E. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Lender 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, the Lender 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 the Lender and/or deducted from any payments due the Lender.

### **XXX.Additional City Requirements**

- A. **MacBride Principles-Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City 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 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 the Lender acknowledges and agrees that he or she has read and understood this section.
- B. **Tropical Hardwoods and Virgin Redwood Ban.** Pursuant to §804(b) of the San Francisco Environment Code, the City 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.
- C. **Drug-Free Workplace Policy.** The Lender 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. The Lender agrees that any violation of this prohibition by the Lender, its employees, agents or assigns will be deemed a material breach of this Agreement.
- D. **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 the City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person 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.
- E. **Notification of Limitations on Contributions.** Through execution of this Agreement, the Lender acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of

negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved.

The Lender 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. The Lender further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Lender's board of directors; the Lender's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Lender; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Lender. Additionally, the Lender acknowledges that the Lender must inform each of the persons described in the preceding sentence of the prohibitions contained in said Section 1.126.

**F. Requiring Minimum Compensation for Covered Employees.** The Lender 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 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](http://www.sfgov.org/olse/mco). A partial listing of some of the Lender's obligations under the MCO is set forth in this Section. The Lender is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, the Lender agrees to all of the following:

(a) The MCO requires the Lender to pay the Lender'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 the Lender is obligated to keep informed of the then-current requirements. Any subcontract entered into by the Lender 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 the Lender'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, the City may pursue any of the remedies set forth in this Section against the Lender. Nothing in this Section shall be deemed to grant the Lender the right to subcontract.

(b) The Lender 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.

(c) The Lender shall maintain employee and payroll records as required by the MCO. If the Lender fail to do so, it shall be presumed that the Lender paid no more than the minimum wage required under State law.

(d) The City, upon reasonable notice to the Lender, is authorized to inspect the Lender's job sites during normal business hours.

(e) The Lender's commitment to provide the minimum compensation required by the MCO 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 Lender fail to comply with these requirements. The Lender agree 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 the Lender's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(f) The Lender 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 at its option the liquidated damages provided for therein), 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, the Lender fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Lender 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.

(g) The Lender 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.

(h) If the Lender is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with the City for the fiscal year is less than \$25,000, but the Lender later enters into an agreement or agreements that cause the Lender to exceed that amount in a fiscal year, the Lender 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 Lender and the City to exceed \$25,000 in the fiscal year.

**G. Requiring Health Benefits for Covered Employees.** The Lender 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 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](http://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, the Lender shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Lender 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 Lender 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) The Lender's failure to comply with the HCAO shall constitute a material breach of this Agreement. The City shall notify the Lender 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, the Lender fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Lender 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 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 the City.

(d) Any Subcontract entered into by the Lender 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. The Lender 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. The Lender 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 the Lender based on the Subcontractor's failure to comply, provided that the City has first provided the Lender with notice and an opportunity to obtain a cure of the violation.

(e) The Lender shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the City with regard to the Lender'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) The Lender 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) The Lender 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) The Lender shall keep itself informed of the current requirements of the HCAO.

(i) The Lender 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) The Lender shall provide the City with access to records pertaining to compliance with HCAO after receiving a written request from the City to do so and being provided at least ten business days to respond.

(k) The Lender shall allow the City to inspect the Lender's job sites and have access to the Lender's employees in order to monitor and determine compliance with HCAO.

(l) The City may conduct random audits of the Lender to ascertain its compliance with HCAO. The Lender agrees to cooperate with the City when it conducts such audits.

(m) If the Lender is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Lender later enters into an agreement or agreements that cause either Lender's aggregate amount of all agreements with the 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 the Lender and the City to be equal to or greater than \$75,000 in the fiscal year.

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

**I. Protection of Private Information.** The Lender 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. The Lender agrees that any failure of the Lender to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, bring a false claim action against the Lender pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Lender.

**J. 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 its residents, and to prevent the further spread of graffiti.

The Lender shall remove all graffiti from any real property owned or leased by the Lender in the City and County of San Francisco within forty eight (48) hours of the earlier of the Lender'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 the Lender 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 (Red wine to first to find!) Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of the Lender to comply with this section of this Agreement shall constitute a breach of this Agreement.

**K. Airport Intellectual Property.** Pursuant to Resolution No. 01-0118, adopted by the City on April 18, 2001, the City affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. All proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may not use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior consent.

**L. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any Lender, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. An underwriter, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. An underwriter, subcontractor or consultant will be deemed to have submitted a false claim to the City if the underwriter, 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.

**M. Conflict of Interest.** Through its execution of this Agreement, the Lender 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.

**N. Assignment.** The Lender is prohibited from assigning, delegating or transferring this Agreement or any part of it unless such assignment, delegation or transfer 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. Any contract made in violation of this provision shall confer no rights on any party and shall be null and void.

**O. Food Service Waste Reduction Requirements.** The Lender 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, the Lender agrees that if either breaches this provision, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, the Lender 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 the 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 the City because of the Lender's failure to comply with this provision.