

A W A R D
BIOSOLIDS and GRIT HAULING SERVICES
For the Term December 20, 2008 Through April 30, 2012

COMPANY INFORMATION

WARNING

Do not use any term contracts to purchase goods and/or services when using Federal, State or Special Funds. Term contracts may contain provisions that conflict with Federal or State provisions.

City departments must contact their assigned City Attorney for applicable provisions, procedures and relevant fund requirements.

Name of Company: SN Sands Corp.
DBA: S & S Trucking

Address: P.O. Box 282009

City, State, Zip: San Francisco, CA 94128

Contact: Franck Sanchez

Telephone Number: (510) 383-3556

Fax Number: (510) 383-2917

24-Hour Emergency Number: (510) 453-9673 – Bruce (Dispatcher)

Email: frank@snsands.com

Payment Terms: Net 30

Federal Tax I.D. Number: 94-3233844

Vendor Number: 16047

CBPO Number: BPSF00003517

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AWARD SHEET

Item No.	Description	Estimated Miles	Price Per/Mile
1.	<p>Biosolids Hauling, Flate Rate per mile For all Locations listed in Table B-1</p> <p>Flat rate applicable 7 days per week. No holiday or overtime rates are applicable.</p> <p>1,884 miles based on one round trip from each City Plant to each landfill.l</p> <p>Do not include bridge tolls.</p> <p>Rate per mile shall be fixed for the initial 5 year term of the contract except for annual adjustments for fuel costs.</p>	1,884 mi	<u>\$ 3.32</u>
2.	<p>Grit Hauling, Weekday Rate Flat Rate per mile To Keller Canyon Landfill</p> <p>88.8 miles based on one round trip from each City Plant to Keller Canyon</p> <p>Weekday rate commences on 6:00 PM Sunday and continues through 6:00 PM Friday.</p> <p>Service will be requested as needed.</p>	88.8 mi	<u>\$ 3.14</u>
3.	<p>Grit Hauling, Saturday/Overtime Rate Flat Rate per mile, To Keller Canyon Landfill. 6:00 PM Fri to 6:00 PM Sat</p>	88.8 mil	<u>\$ 3.30</u>
4.	<p>Grit Hauling, Sunday/Holiday Rate Flate Rate per mile. To Keller Canyon Landfill. 6:00 PM Sat to 6:00 PM Sun</p>	88.8 mi	<u>\$ 3.45</u>

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BID AND CONTRACT CONDITIONS

TERMS RELATED TO BIDDING

1. When Bids are Due; Bid Opening Procedures

Bids must be delivered before time set for bid opening. Bids will be opened by Purchasing at the hour and place stated in the ad in the presence of bidders who attend, and bid prices will be read upon request as time permits. Bidders may inspect the bids after award.

2. Articles Furnished

Articles and services must comply with applicable laws, ordinances and other legal requirements, including (among others) the Cal-OSHA regulations in Title 8 of the Code of Regulations and, for electrical products, Sections 110.2 and 110.3 (B) of the S.F. Electrical Code. In addition, if an electrical item has not been tested by a lab approved by City's Department of Building Inspection (DBI) or Department of Public Works (DPW), Contractor shall notify the requesting department before delivery by writing the department at the "Deliver to" address on the front of the Purchase Order. Approved testing labs are posted on Purchasing's website at <http://www.sfgov.org/oca/>. When a non-tested item is delivered, the department will request approval from DPW. If the department is unable to obtain approval, City reserves the right to cancel the transaction and return the item to Contractor, at no charge to City.

3. Bidding on Separate Services and in the Aggregate

Bidders may bid separately for any service unless otherwise provided. Bidders may make an offer on one, some or all services, unless otherwise provided.

4. Prices

Prices quoted must be fixed except as otherwise specified in this document. Any bid requiring receipt of order in less than 30 days will be unacceptable unless otherwise specified herein.

5. Awards; Rejection of Bids

Purchasing may make awards on one, some or all services in a bid. Purchasing reserves the right to reject any and all bids.

6. Cash Discounts; Terms of Payment

Cash discount (discount for prompt payment) will not be taken into consideration in determining the low bid. However, cash discounts are encouraged and must meet the following conditions:

- a. The discount period will start upon date of completion of all services on any Purchase Order or other authorization certified by Controller, or upon date of receipt of properly prepared invoices covering such services, whichever is later.

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- b. Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing the City's check.

The discount will be deducted from the invoice amount in accordance with the provisions of 6a and 6b above, unless the bid states the discount is not available. No additional charge shall accrue against City in the event that City does not make payment within any time specified by bidder.

7. Sunshine Ordinance

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

TERMS RELATED TO THE CONTRACT

8. Contract Interpretation: Choice of Law/Venue; Assignment

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

9. Hold Harmless and Indemnification

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Contract, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Contract, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorney's fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Contract.

10. Failure to Deliver

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

11. Budget and Fiscal Provisions

This Contract is subject to the budget and fiscal provisions of City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Contract will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Contract will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Contract in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Contract.

12. Default; Remedies

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

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costs or expenses incurred by City as a result of such event of default and any liquidated damages due from Contractor pursuant to the terms of this Contract or any other contract.

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

13. Termination for Convenience

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

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

14. Guaranteed Maximum Costs

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

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- d. 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.

15. Taxes

- a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Contract, or the services delivered pursuant hereto, shall be the obligation of Contractor.
- b. Contractor recognizes and understands that this Contract may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Contract entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:
- (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 Contract may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Contract. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
 - (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.

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16. Use of City Opinion

Contractor shall not quote, paraphrase, or otherwise refer to or use any opinion of City, its officers or agents, regarding Contractor or Contractor's performance under this Contract without prior written permission of Purchasing.

17. Nondiscrimination; Penalties

- a. **Contractor Shall Not Discriminate.** In the performance of this Contract, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the U.S., or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Contractor.
- b. **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Contract.
- c. **Nondiscrimination in Benefits.** Contractor does not as of the date of this Contract and will not during the term of this Contract, in any of its operations in San Francisco, on real property owned by the City or where work is being performed for the City, 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, and any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, or between the domestic partners and spouses of such employees, if the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to conditions set forth in San Francisco Administrative Code Sec. 12B.2(b).
- d. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated by reference and made a part of this Contract as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Contract under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) 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 Contract may be assessed against Contractor and/or deducted from any payments due Contractor.

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18. 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.

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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 7.5%. 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

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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.

19. 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.

20. Tropical Hardwood and Virgin Redwood Ban

Pursuant to § 804(b) of the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, Contractor shall not provide any items to the City in performance of this Contract which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of Contractor to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

21. Resource Conservation

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

22. Submitting False Claims; Monetary Penalties

Any contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or

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consultant who commits any of the following acts shall also be liable to the City for the costs, including attorney's 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: (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. (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.

23. Liability of City

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

24. Drug-Free Workplace Policy

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

25. 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 Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Contract and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Contract.

26. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Contract, and must at all times comply with such local codes,

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ordinances, and regulations and all applicable laws as they may be amended from time to time.

27. Bid Protests

Bid protests for purchases of Services in excess of \$50,000 shall be submitted and responded to in accordance with Regulation 21.3(i) of the San Francisco Administrative Code, Chapter 21.

End Bid and Contract Conditions

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GENERAL CONDITIONS

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

28. CONTRACT TERM

The contract period shall be for **60 months**. The initial term of this contract is the period from award execution date, approximately December 1, 2008, or the above-stated term date, whichever is later, through the last day of the month of a 60 consecutive month period.

29. CONTRACT EXTENSION

This contract may be extended as follows. Two (2) extensions are allowed. Each extension may be for a period of up to **24 months**. Extensions must be by mutual agreement in writing. The maximum contract period shall not be more than 9 years.

30. TOLL-FREE TELEPHONE NUMBER

A contractor located outside of the City and County of San Francisco is encouraged to provide free telephone services for placing orders. This requirement can be met by providing a toll-free telephone number or accepting collect calls. The free service may be a consideration in evaluating this bid.

31. COOPERATIVE AGREEMENT

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

32. LEFT BLANK BY AGREEMENT OF THE PARTIES

33. LBE ORDINANCE – (LBE Bid Discount Not Applicable on this Contract)

To qualify for a bid discount under the provisions of Administrative Code Chapter 14B, an LBE must be certified by the Human Rights Commission by the Bid Due date.

The certification application is available from HRC (415) 252-2500, and on the web at:

www.sfhrc.org

Click on 14B (LBE) Requirements & Forms.

Click on appropriate LBE Certification Application.

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GENERAL CONDITIONS (Continued)

34. CLAIM FOR PREFERENCE

To claim preference under the LBE Ordinance, See Bid Questionnaire attached.

35. BID PREFERENCE FOR BROKERAGE SERVICES

Pursuant to Section 14B.7 of the Administrative Code, a bid preference will only be awarded to an LBE, or an LBE joint venture where the LBE's participation in the joint venture exceeds 35 percent, directly responsible for providing materials, equipment, supplies or services to City as required by the Bid solicitation. An LBE will be deemed to be directly responsible for providing the required commodity or service only if it regularly does business as a manufacturer, or authorized manufacturer's representative, dealer or distributor, stocking distributor, franchisee, licensee, service provider, or has another direct agency relationship with the manufacturer or provider of the solicited commodity or service, and has been so certified by HRC.

An LBE will be considered to be "regularly doing business", as that term is used in the foregoing paragraph, if in the normal course of business, it stocks, warehouses or distributes commodities to businesses or entities other than public entities having a local business preference program. Such a determination will be subject to audit by HRC.

No preference will be given to an LBE engaging in brokerage, referral or temporary employment services not meeting this definition, unless those services are required and specifically requested by the department.

36. CHAPTER 14B REQUIREMENTS A. LBE Subcontracting Participation Goals

The LBE subcontracting goal for this project is 7.5% of the total value of the services to be procured.

Each firm responding to this solicitation shall demonstrate in its response that it has used good-faith outreach to select LBE subcontractors as set forth in S.F. Administrative Code §§14B.8 and 14B.9, and shall identify the particular LBE subcontractors solicited and selected to be used in performing the contract. For each LBE identified as a subcontractor, the response must specify the value of the participation as a percentage of the total value of the services to be procured, the type of work to be performed, and such information as may reasonably be required to determine the responsiveness of the bid. LBEs identified as subcontractors must be certified with the San Francisco Human Rights Commission at the time the bid is submitted, and must be contacted by the bidder (prime contractor) prior to listing them as subcontractors in the bid. Any bid that does not meet the requirements of this paragraph may be deemed non-responsive.

In addition to demonstrating that it will achieve the level of subcontracting participation required by the contract, a bidder shall also undertake and document in its submittal the good faith efforts required by Chapter 14B.8(C)&(D) and HRC Attachment 3, Requirements for General Services Contracts.

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Bids which fail to comply with the material requirements of S.F. Administrative Code §§14B.8 and 14B.9, HRC Attachment 3 and this solicitation may be deemed non-responsive and will be rejected. During the term of the contract, any failure to comply with the level of LBE subcontractor participation specified in the contract shall be deemed a material breach of contract. Subcontracting goals can only be met with HRC-certified LBEs located in San Francisco.

B. LBE Participation – Rating Discounts - (Not Applicable)

C. HRC Forms to be Submitted with Proposal – See HRC Attachment 3

(1) All proposals submitted must include the following Human Rights Commission (HRC) Forms. See HRC Attachment 3:

- 1) HRC Contract Participation Form 2A
- 2) HRC "Good Faith Outreach" Requirements Form 2B
- 3) HRC Non-Discrimination Affidavit Form 3
- 4) HRC Employment Form 5

If these forms are not returned with the proposal, the proposal may be determined to be non-responsive and may be rejected. All HRC forms may be obtained from the following website: http://sfgov.org/site/sfhumanrights_page.asp?id=53945

(2) Please submit two (2) copies of the above forms with your bid. The forms should be submitted in two separate, sealed envelopes addressed to:

Selormey Dzikunu, Contract Compliance Officer
Human Rights Commission
25 Van Ness, 8th floor
San Francisco, CA 94102

Re: Contract Proposal 68380

AND

Ben Kawamura
Office of Contract Administration – Purchasing
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

Re: Contract Proposal 68380

If you have any questions concerning the HRC Forms, you may call Selormey Dzikunu, Human Rights Commission Contract Compliance Officer at (415) 274-0511. e-mail: Selormey.Dzikunu@sfgov.com

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BIOSLIDS and GRIT HAULING SERVICES
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GENERAL CONDITIONS (Continued)

37. AUDIT AND INSPECTION OF RECORDS

Contractor agrees to maintain and make available to City during business hours accurate books and accounting records relative to its activities under this Contract. 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 Contract, whether funded in whole or in part under this Contract. 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 Contract 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 of this Contract shall have the same rights conferred upon City by this Article.

37. CONFLICT OF INTEREST

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

38. NON-WAIVER OF RIGHTS

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

39. CONTRACTOR'S DEFAULT

If Contractor fails to fulfill its obligations under this Contract Proposal, whether or not said obligations are specified in this section, Purchasing reserves the right to: (a) terminate this contract at no cost to City; (b) take action in accordance with Section 12 or (c) exercise any other legal or equitable remedy.

41. BANKRUPTCY

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

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GENERAL CONDITIONS (Continued)

42. PROPRIETARY INFORMATION OF CITY

Contractor understands and agrees that, in the performance of the work or services under this Contract 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 details, the disclosure of which to third parties will 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 contract, except to the extent that Contractor can demonstrate that: (a) the confidential information at the time of disclosure was part of the public domain by publication or otherwise, except by breach of this contract; (b) the confidential information can be established to have been in possession of Contractor at the time of disclosure and was not acquired directly or indirectly from City under another proprietary information obligation; or (c) the confidential information was received from a third party without any restrictions; provided, however that such information was not obtained by said third party, directly or indirectly, in breach of a proprietary information obligation with City.

43. 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 Contract shall constitute a waiver or limitation of any rights which City may have under applicable law.

44. REPORTS BY CONTRACTOR - MULTI-YEAR TERM CONTRACT

Each year, 90 days before each anniversary date of this Contract, Contractor must furnish a report of the total services ordered under this Contract during the preceding twelve months. The report must be in a format acceptable to City and must list by department or location the following: (1) all services awarded under this contract; and (2) total quantity and dollar value of each service ordered, including services for which there were no orders. Contractor must also furnish a separate similar report for the total of all services ordered by City which are not part of this Contract.

Contractor shall send the reports to:

Jeannie Louie, Supervising Purchaser
Re: Term Contract No. 68380
City and County of San Francisco
Office of Contract Administration – Purchasing
c/o Public Utilities Commission
1155 Market Street, 5th floor
San Francisco, CA 94103

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45. NOTICE TO PARTIES

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

Director of Purchasing
City and County of San Francisco
Office of Contract Administration – Purchasing
c/o Public Utilities Commission
1155 Market Street, 5th floor
San Francisco, CA 94103

46. SUBCONTRACTING

Contractor is prohibited from subcontracting services under this Contract unless such subcontracting is agreed to in writing by Purchasing. No party on the basis of this Contract shall in any way contract on behalf of or in the name of the other party of this Contract, and violation of this provision shall confer no rights on any party and any action taken shall be void.

47. INDEPENDENT CONTRACTOR

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

Any terms in this Contract referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Contract.

48. SEVERABILITY

Should the application of any provision of this Contract to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Contract shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to

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GENERAL CONDITIONS (Continued)

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.

49. EMERGENCY – PRIORITY 1 SERVICE

In case of an emergency that affects the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service. Contractor will make every good faith effort in attempting to provide emergency services.

Contractor shall provide a 24-hour emergency telephone number of a company representative who is able to receive and act on requests for emergency services.

In addition, Contractor shall charge fair and competitive prices for services ordered during an emergency and not covered under the awarded contract.

50. REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION – IRS FORM W-9

See attached Form P-225, Standard Bid Forms, Item 1.

51. FIRST SOURCE HIRING PROGRAM (FSHP)

If the contract is for more than \$50,000, the successful bidder will be required to agree to comply fully with and be bound by the provisions of the First Source Hiring Program ordinance, as set forth in San Francisco Administrative Code Chapter 83. Generally, this ordinance requires contractors to notify the First Source Hiring Program of available entry level jobs and provide the Workforce Development System with the first opportunity to refer qualified individuals for employment.

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this Chapter. For additional information regarding the FSHP, call (415) 401-4935.

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 Contract as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Contract under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Contract shall have the meanings assigned to such terms in Chapter 83.

B. First Source Hiring Agreement

- (1) Contractor will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing

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requirement shall be ten (10) days, unless business necessity requires a shorter period of time.

- (2) Contractor will comply with requirements for providing timely, appropriate 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.
- (3) Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. A contractor may establish its good faith efforts by filling: 1) its first available Entry Level Position with a job applicant referred through the First Source Program; and, 2) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.

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

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.

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52. PREVAILING RATE OF WAGES REQUIRED

For Solid Waste Hauling Services:

Every contract issued by the City and County of San Francisco for the hauling of solid waste (or grit) generated by the City in the course of City operations must require that any employee engaged in the hauling of solid waste (or grit) shall be paid not less than the Prevailing Rate of Wages, including fringe benefits or the matching equivalent thereof, paid in private employment for similar work in the area which the contract is being performed. The term "employee" as used in this section shall mean any individual engaged in the hauling of solid waste (or grit) for a Prime Contractor or Subcontractor. Prime Contractors must require Subcontractors to comply with the prevailing wage rate required in this section. The Board of Supervisors shall determine the Prevailing Wage Rate at least once each year. If a contract for solid waste (or grit) hauling conflicts with an existing Collective Bargaining agreement to which the contractor is a party, the collective bargaining agreement shall prevail.

Enforcement

If a Contracting Officer determines that the Contractor or a Subcontractor may have violated the Prevailing Wage requirements of this section, the Contracting Officer shall send written notification to the Contractor or Subcontractor of the possible violation. In addition to and without prejudice to any other remedy available, the Contracting Officer may terminate the Contract, in which case the Contractor shall not be entitled to any additional payment unless within 30 days of receipt of the violation notice the Contractor has either (1) cured the violation or (2) established by documentary evidence, including but not limited to payroll records, the truth and accuracy of which shall be attested to by affidavit, proof of compliance with the provisions of this section.

Where a Contractor or Subcontractor fails to pay at least the Prevailing Rate of Wages to employees, the Contractor shall have "cured" the violation once the Contractor or Subcontractor reimburses employees by paying each individual the balance of what he or she should have earned in accordance with the requirements of this section.

In addition to, or instead of terminating the Contract, where the Contracting Officer finds that the Contractor willfully violated the requirements of this section, the Contracting Officer or the Labor Standards Enforcement Officer may assess a penalty (a "willful violation penalty") of not more than 10 percent of the dollar amount of the Contract. The Contracting Officer or Labor Standards Enforcement Officer may impose such willful violation penalty regardless of whether the Contractor has cured the violation.

53. MINIMUM COMPENSATION ORDINANCE ("MCO") - *Not Applicable*

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54. 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 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

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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.

55. 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.

A. Contractor shall provide the Earned Income Credit (EIC) Form to each Eligible Employee at each of the following times:

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- (1) within 30 days following the date on which the applicable Contract or Contract Modification becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in question);
 - (2) promptly after any Eligible Employee is hired by Contractor; and
 - (3) annually between January 1 and January 31 of each calendar year during the term of the Contract.
- B. Failure to comply with the foregoing requirement shall constitute a material breach by Contractor of the terms of the Contract.
- C. If within 30 days after the 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 30 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 the terms of the Contract or under applicable law.

56. LIMITATIONS ON CONTRIBUTIONS

Through execution of this Contract, 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 or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer of the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until the later of either (1) the termination of negotiations for such contract or (2) three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

57. PROHIBITION ON POLITICAL ACTIVITY WITH CITY FUNDS

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

58. PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Contract unless an exemption from the requirements of Chapter 13 of

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GENERAL CONDITIONS (Continued)

the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Administrative 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.

59. 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.

60. CONTRACT PRODUCT / SERVICE QUALITY REPORT

The attached report form (Attachment A) will be provided to departments using this Contract. Users of the contract may complete and return these reports at any time during the life of the contract. The purpose of the report is to monitor contractor performance and determine supplier successes or shortcomings. Each report will be sent to the awarded supplier/contractor. They will have an opportunity to respond to the information provided by the department. Quality reports that go unresolved to the satisfaction of the Purchaser may be used as a basis for commencement of partial or complete contract default proceedings.

61. NONDISCLOSURE OF PRIVATE INFORMATION

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Contract as though fully set forth. Capitalized terms used in this section and not defined in this Contract shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to the following:

A. Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Contract to any other Subcontractor, person, or other entity, unless one of the following is true:

- 1) The disclosure is authorized by this Contract;

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GENERAL CONDITIONS (Continued)

- 2) The Contractor received advance written approval from the Contracting Department to disclose the information; or
 - 3) The disclosure is required by law or judicial order.
- B. Any disclosure or use of Private Information authorized by this Contract shall be in accordance with any conditions or restrictions stated in this Contract. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.
- C. Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.
- D. Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Contract, debar Contractor, or bring a false claim action against Contractor.

62. 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

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GENERAL CONDITIONS (Continued)

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 Contract shall constitute a default of this Contract.

63. MODIFICATION OF CONTRACT

This Contract 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 Contract.

End General Conditions

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SPECIAL CONDITIONS

64. PURPOSE

The purpose of this contract is to provide Biosolids and Grit Hauling Services for the San Francisco Public Utilities Commission (PUC). The PUC operates three (3) wastewater treatment facilities; the Southeast Water Pollution Control Plant, the Oceanside Water Pollution Control Plant and the Treasure Island Sewage Treatment Plant. Biosolids and grit will be hauled from these sites to destinations as determined by the PUC.

San Francisco generates between 84,000 - 89,000 tons of biosolids per year and between 4,000 - 6,000 tons of grit per year. Approximately 800 - 1300 tons of grit is from annual digester cleaning.

Hauling services must be provided year round; 365 days per year on a 24 hour basis, regardless of weather conditions, from all the wastewater treatment facilities specified in this document.

The Contractor must provide all labor, equipment, materials and supervision necessary to receive, transport and unload the biosolids and grit.

65. PRE-BID CONFERENCE

A Pre-bid Conference and Plant Tour will be held as follows:

Location: Southeast Water Pollution Control Plant
750 Phelps
San Francisco, CA 94124

Date and Time: February 22, 2007, 1:00 PM

Although not mandatory, attendance is strongly urged for all prospective bidders on this contract.

Please bring a copy of this contract proposal to the Pre-bid Conference.

Questions concerning this Contract Proposal should be submitted by e-mail or FAX at least 72 hours prior to the date and time of the Pre-bid Conference and directed to:

Ben Kawamura, Supervising Purchaser
Office of Contract Administration
c/o Public Utilities Commission
1155 Market Street, 5th floor
San Francisco, CA 94103

FAX: (415) 487-5237
Tel: (415) 554-3166

Email: bkawamura@sfgwater.org

Please reference Contract Proposal No. 68380.

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The Pre-bid Conference will begin at the time specified, and company representatives are urged to arrive on time. Topics already covered will not be repeated for the benefit of late arrivals. Failure to attend the Pre-bid Conference shall not excuse the successful bidder from any obligations of the contract. Any change or addition to the requirements contained in this Contract Proposal as a result of the Pre-bid Conference will be by written Change Notice.

66. SCOPE OF SERVICES TO BE PERFORMED

The Contractor shall provide the services as described in the Appendices below. All Appendices are attached.

Scope of Services	Appendix B
Calculation of Charges – Biosolids	Appendix B-1
Calculation of Charges – Grit	Appendix B-2

In addition to the Scope of Services described herein, the Contractor shall provide its best efforts to continue to provide hauling services in the event of a public emergency as may be declared by any public official, including but not limited to, a sudden, unforeseeable and unexpected occurrence involving a clear and imminent danger that demands immediate action to prevent or mitigate the loss of, or damage to, life, health, property or essential public services, or the discovery of any condition involving such activities. In providing continuity of service, the Contractor shall respond to an emergency service request within four (4) hours of notification by the City. Nothing in this paragraph shall be interpreted to be in conflict with General Condition 48, Emergency – Priority 1 Service, of this document

67. QUESTIONS / PROTESTS

Any questions or objections concerning the requirements in this contract proposal must be submitted, in writing, and received by the Office of Contract Administration – Purchasing no less than five working days prior to the bid opening date and time. Bidders who fail to do so will waive all further rights to protest, based on these specifications and conditions.

68. COMPLIANCE WITH REGULATIONS

Licenses Required

The Contractor shall possess all valid Federal, State and local hauling licenses and, upon request, shall provide such licenses to the Biosolids Coordinator. The Contractor shall be licensed with the State of California Public Utilities Commission with either a highway carrier contract permit, a common carrier certificate, or a Cal PUC T number. These permits and/or certificates must not be currently under probation or suspension, as defined or determined by the State of California Department of Consumer Affairs.

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SPECIAL CONDITIONS (Continued)

The Contractor shall insure that its subcontractor(s) and all workers that the Contractor and its subcontractors employ have proper and valid licenses and/or certifications required by Federal, State or local law that may be necessary to perform the work as described in this contract. The Contractor and its subcontractors shall submit current identification (e.g. Driver's License) for each truck driver employed on this contract so that the driver may be properly identified prior to entering City facilities.

The Contractor and its subcontractors shall ensure compliance of all personnel and equipment with all applicable rules and laws, including but not limited to those promulgated by the Division of Industrial Safety of the Department of Industrial Relations of the State of California. The Contractor shall be solely responsible for insuring the proper training of its drivers. The Contractor shall, at the request of the Biosolids Coordinator, furnish proof of any licenses and/or certifications. Changes in regulations and/or licensing requirements will not constitute justification for contract amendments or relaxation of the responsibility of the Contractor to provide the required service.

69. BIDDER'S / CONTRACTOR'S QUALIFICATIONS

A. Minimum Requirements

In order to receive consideration Bidders must meet the minimum requirements described in Appendix B, Section X, Minimum Criteria for Responsiveness. Bidders who do not clearly meet these requirements will be deemed non-responsive, and removed from further consideration.

B. The City may make such investigation, as it deems necessary prior to the award of this contract, to determine the Bidders compliance with the Minimum Criteria for Responsiveness. The City may take into consideration, but not be limited to:

- (1) Bidder's experience
- (2) Location
- (3) Adequacy of plant facilities
- (4) Personnel and equipment to properly perform all services called for under the contract.

C. In order to receive consideration, bidder must have sufficient knowledge and experience in the services covered by the contract.

D. Bidder must be able to demonstrate to the Purchaser's satisfaction that it possesses adequate facilities, equipment and the financial resources to fully comply with the minimum requirements of the contract prior to award.

E. City reserves the right to inspect Contractor's place of business prior to award or at any time during the contract term or any extension thereof, to determine the Contractor's capabilities and qualifications.

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SPECIAL CONDITIONS (Continued)

- F. Contractor shall be responsible for producing the reports required under General Condition 44 of this document. Failure to provide the required reports may result in application of the Contractor's Default clause of this Contract.
- G. City reserves the right to reject any bid on which the information submitted by Bidder fails to satisfy City and/or Bidder is unable to supply the information and documentation within the period of time requested.
- H. City reserves the right to terminate this contract and or declare a Bidder non-responsive if the information requested from and submitted by Contractor fails to meet the requirements stated herein, or Contractor is unable to provide the information and/or documentation within the period requested.
- I. Contractor shall be independent and, as such, the hiring, training, equipping, supervising, directing and discharging of their employees shall be the responsibility of the Contractor. The payment of Federal, State, and local taxes and overtime wages shall also be the responsibility of Contractor.

70. CITY DEPARTMENT'S RESPONSIBILITIES

The Public Utilities Commission shall designate a representative, the Biosolids Coordinator, who shall administer the contract and direct and monitor the services provided by the Contractor.

- A. The Biosolids Coordinator shall determine the distribution and site destinations for the disposal and /or re-use of all biosolids and grit generated by City facilities.
- B. The Biosolids Coordinator shall provide the Contractor with written notice of the composition of the biosolids, to include information requested by the Contractor that may be needed to facilitate compliance with applicable legal and regulatory requirements.
- C. The City will stabilize the biosolids by approved processes as defined by 40 CFR 503 regulations. The City shall comply with applicable local, State and Federal biosolids regulations and permit requirements. All biosolids shall be stabilized by an industry approved process to minimize offensive odors and to reduce volatile solids consistent with a stabilized material.
- D. The City will not provide the Contractor with any biosolids, grit or digester cleaning spoils that contain hazardous material in accordance with applicable Federal, State or local laws.
- E. The City will allow the Contractor reasonable access to the City's biosolids and grit delivery systems.
- F. The Assistant General Manager of the PUC's Wastewater Enterprise or designee maintains the sole right to select or reject any or all sites for biosolid and grit disposal or re-use. No City biosolids or grit may be disposed or re-used at a site that is rejected by the City. All such biosolids and grit are for re-use or disposal at the

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SPECIAL CONDITIONS (Continued)

site(s) outlined in this document. No other use or disposal of the biosolids or grit is permitted without written authorization from the City.

- G. The Biosolids Coordinator shall notify the Contractor of operational changes that may affect the quantities of biosolids or grit. (e.g. plant shutdowns, planned maintenance etc.)
- H. The Biosolids Coordinator shall provide status information to the Contractor when requested so that the Contractor can schedule biosolids and grit hauling. Additionally, nothing in the agreement shall abridge the right for City personnel to request additional biosolids or grit hauling, provided there is adequate material for a minimum load greater than 20 tons. The Contractor shall respond to each request for additional hauling within six (6) hours.

71. BID SECURITY

Each bid must be accompanied by a bid bond, or money order, or a cashier's check or certified check, in the amount of **One thousand dollars, (\$ 1,000.00)** payable to the City and County of San Francisco, to guarantee the filing of Performance Bond and Insurance Certificates, and proper execution of the contract. Personal or company checks will not be accepted.

Any proposal submitted without the proper bid security may be determined to be non-responsive and result in the rejection of the bid.

After the successful bidder has furnished the required documents or the City has rejected proposals, all bid securities, except those which may have been forfeited, will be returned to the respective bidders whose proposals they accompanied.

72. PERFORMANCE BOND

The successful bidder will be required to furnish a Performance Bond on the form furnished by City, in a sum of not less than 50% of the annual amount of the contract to guarantee the faithful performance of this contract.

The Contractor shall furnish the bond within ten (10) days after receiving notice from the City. The bond must remain in force for the full term of the contract and must be renewed annually for multi-year contracts.

The bond must be approved as to sufficiency and qualifications of the surety by the Controller.

73. FIDELITY BOND - *Not Applicable*

74. INSURANCE

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

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SPECIAL CONDITIONS (Continued)

- A. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Contract, Contractor must maintain in force, during the full term of the contract, insurance in the following amounts and coverages:
1. Workers' Compensation, with Employers' Liability limits not less than \$1,000,000 each accident.
 2. Commercial General Liability Insurance with limits not less than \$3,000,000 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Contractual Liability, Independent Contractor, Broad Form Property Damages, Personal Injury, Products and Completed Operations.
 3. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Owned and Non-owned and Hired Auto Coverage, as applicable.
 4. Contractor shall provide Pollution Liability Coverage for clean-up, restoration, transportation and disposal at an appropriate certified disposal site in an amount not less than \$3,000,000.
- B. Commercial General Liability and Commercial Automobile Liability Insurance policies shall be endorsed to provide the following:
1. Name as ADDITIONAL INSUREDS, 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 Contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- C. ALL POLICIES SHALL BE ENDORSED TO PROVIDE:
- Thirty days advance written notice to City of cancellation, non-renewal or reduction in coverage for any reason, mailed to the following address:
- Director
Office of Contract Administration – Purchasing
City and County of San Francisco
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685
- D. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Contract and, without lapse, for a period of three years beyond the expiration of this contract, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Contract, such claims shall be covered by such claims-made policies.

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SPECIAL CONDITIONS (Continued)

- E. 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 limits specified above.
- F. Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until City receives satisfactory evidence of reinstated coverage as required by this Contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this Contract effective on the date of such lapse of insurance.
- G. Before commencing any operations under this Contract, Contractor shall do the following: (1) 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, and (2) furnish complete copies of policies promptly upon City request. Failure to maintain insurance shall constitute a material breach of this Contract.
- H. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.
- I. 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.

74. FAILURE TO EXECUTE CONTRACT

- A. Within ten days of the receipt of a notice of award, the bidder to whom the contract is awarded shall deliver the performance bond and/or specified insurance certificates to City.
- B. If the bidder fails or refuses to furnish the required bond and/or insurance within ten days after receiving notice from Purchasing, Purchasing may, at its option, determine that this bidder has abandoned its bid. Thereupon the tentative award of said contract to this bidder shall be canceled and City shall notify the bidder's surety and collect on the bidder's bond (or the check accompanying its bid shall be deposited with the Treasurer of the City and County of San Francisco for collection) and the proceeds thereof shall be retained by City as partial liquidated damages for failure of such bidder to properly file the bonds and insurance herein required. The foregoing in no way limits the damages which are recoverable by City whether or not defined elsewhere in the contract documents.

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SPECIAL CONDITIONS (Continued)

75. PRICE

- A. Bid prices are to be firm for the initial five (5) year term of the contract except for annual adjustments that are allowed for the cost of fuel. See Price Adjustment, Section 77.
- B. Only the bid prices that appear on City's Contract Proposal Bid Sheets will be considered. No other pages with prices or attached price lists and/or catalog prices will be considered.
- C. Bid price to include all costs chargeable to City. Contractor will assume all costs including personnel salaries, transportation and any other expense for the training of his/her employees. No charges to City are to be made for training. All costs to City shall be included in prices entered on Bid Sheets. No overtime will be paid unless same has been approved in advance by City the Public Utilities Commission.

77. PRICE ADJUSTMENT

Biosolids and Grit Hauling

- A. Prices for biosolids and grit hauling are to remain firm for five (5) years, the initial term of the contract. Thereafter, the Contractor may request a price adjustment for each of the allowed two (2) year extensions.
- B. Price adjustments for any extension shall be based upon the Prevailing Wage in effect at the time of the extension. Prices shall remain firm for the duration of each two year extension.
- C. Such adjustments shall commence 30 days after submission of satisfactory documentation and the approval of the Purchaser.
- D. It shall be the Contractor's responsibility to request and to provide documentation satisfactory to the Purchaser to support any price increase request.

Fuel Adjustments

Fuel prices shall remain firm for the first calendar year of the contract. Thereafter, Contractors may make requests to review prices due to fluctuations in diesel fuel prices. Changes to the cost of labor, materials, overhead or administration will not be considered as cause to adjust fuel prices. Requests for price adjustment for fuel costs may be submitted by the Contractor at least sixty (60) days prior to the end of the calendar year.

The City will use the fuel index published by the Energy Information Administration's Weekly On-Highway Diesel Prices Index to determine the allowable price adjustment. The index is

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available from their web site at: <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>. Information will be taken from the California data.

The allowable adjustment will be calculated by dividing the posted price for October 19th of the current year by the index posted price for October 19th of the prior year.

To calculate the fuel price adjustment, the City will assume the cost of fuel is 9% of the rate per mile for Biosolids Hauling. This factor will be a constant in the calculations and will not change and will be used for all bidders. A sample calculation is below.

Example: Fuel Adjustment – For Illustration Only

Index on Oct 19 th 2007	1.50	
Index on Oct 19 th 2008	1.75	
Percent Change:	16.7%	[(1.75 /1.50) – 1 = 0.167]
Cost per mile	\$20.00	
Fuel cost	\$20.00 x 9% = \$1.80	
Allowable Increase	16.7% x \$1.80 = \$0.30	
Adjusted Cost per mile	\$20.00 + \$1.80 + \$0.30 = \$22.10	

The effective date of all adjustments based on the cost of fuel will be January 1 of the following year.

Alternative Fuel

If, per Appendix B, the Contractor elects to use an alternative fuel, including but not limited to biodiesel, in all vehicles involved in hauling of biosolids and grit, the Contractor shall receive an additional one-time fuel adjustment increase of 10%. In order to qualify for this adjustment, the Contractor must submit receipts indicating purchase of alternative fuel to the Biosolids Coordinator. If approved, the alternative fuel adjustment would be effective sixty (60) days after the submittal of receipts.

78. BID PRICE EVALUATION

To determine the apparent low bidder, the price per mile for Biosolids hauling, (Item 1 on Bid Sheet) and the price per mile for Grit hauling, (Item 2 on Bid Sheet) will be multiplied by the Estimated Miles for each item. This calculation will yield an Extended Price.

The Extended Price for Items 1 and 2 will be added together to yield an Evaluated Price.

Items 3 and 4 on the Bid Sheet are for information only, and will not be evaluated.

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Except as otherwise noted on Bid Sheets, bid prices will be evaluated for each service based on the estimated quantity multiplied by the bid price per specified unit and less any applicable LBE preference (see General Conditions 33 through 35).

Purchasing will attempt to evaluate this contract proposal within thirty (30) days after receipt of bid(s). If Purchasing requires additional evaluation time, all bidders will be notified in writing of the new expected award date.

79. AWARD

- A. Award will be made to the lowest responsive and responsible bidder in the aggregate as noted on the Bid Sheets.
- B. In determining the award, Purchasing will take into consideration, but will not be limited to:
 - 1. Compliance with Minimum Requirements in Appendix A
 - 2. Price (evaluated)
 - 3. Satisfactory review of bidder's qualifications
 - 4. Any other factors deemed pertinent

80. AWARDED SERVICES

- A. If, during the term of the contract, a contract service is determined to be unacceptable, and such is documented by Purchasing, it is understood and agreed that the service will be cancelled and removed from the contract without penalty to City. City's sole obligation to Contractor is payment for services performed prior to the cancellation date. City shall give Contractor ten days notice prior to any cancellation. City will contract for the required service from any source and in the manner as determined by Purchasing.
- B. Contractor must notify Purchasing by certified mail, 30 days in advance of any changes in the services required in the contract. Any changes made without the approval of Purchasing will constitute default and result in City invoking General Condition 12.

81. ADDITIONAL SERVICES

- A. If, in the satisfaction of governmental interests, it is necessary to purchase additional services from Contractor, additional services may be added to this contract by mutual agreement of the parties.
- B. Aggregated cost of all services added to the contract during the contract term shall not exceed 20% of the total estimated value (cost) of the original contract.
- C. All requests to add additional services to the contract must be submitted by City departments in writing to the Office of Contract Administration – Purchasing (Purchasing). All requests must include complete scope of work, estimated

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quantities for the remainder of the contract period and a price quotation provided by Contractor, for each service.

- D. All additional services added to the contract shall be approved through issuance of a contract modification, executed and signed by Purchasing and Contractor.
- E. In the event the aggregated cost of the contract increases by more than 20% of the total estimated value of the original contract, or the increase totals more than \$50,000, the amount over 20%, or \$50,000, shall be bid in accordance with Standard Purchasing Procedures.

The resulting bid award shall be added to the contract through a contract modification (same Contractor) or the issuance of a new contract (new Contractor) and include Contractor's name and information, complete item description, delivery information and pricing information.

- F. The contract term for the additional services added to the contract after the initial award shall be the remaining term of the existing contract and any extension thereof.

82. WORKER RETENTION

Contractors are hereby notified of the requirements to comply with the Worker Retention requirements of Section 21.25-5 of the San Francisco Administrative Code. This section applies to Employees of Contractors and Subcontractors who work at least 15 hours per week under the contract.

For contracts subject to this Section, the Contractor is under the following obligations:

Transition Employment Period

- A. Where the Contracting Officer has given notice that a contract has been terminated or ended, or where a Contractor has given notice of such termination, upon giving or receiving such notice, as the case may be, the terminated or ending Contractor shall, within ten (10) days thereafter, provide to the successor contractor, the name, date of hire, and employment occupation classification of each employee who works at least 15 hours per week under the contract.

If the terminated contractor does not know the identity of the successor Contractor, if any, by the time that notice was given of the contract termination, the terminated Contractor shall obtain such information from the Contracting Officer. If a successor Contractor has not been awarded by the end of the 10 day period, the employment information shall be provided to the Contracting Officer. Where a Subcontractor has been terminated prior to the termination of the contract, the terminated Subcontractor shall be deemed a terminated Contractor.

- B. A successor contractor shall retain, for a 90-day transition employment period, employees who have worked at least 15 hours per week and been employed by the terminated Contractor or its Subcontractors, if any, for the preceding twelve (12)

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months of longer under the Contract, providing that just cause does not exist to terminate such employee. The predecessor Contractor's employees who worked at least 15 hours per week shall be employed in order of their seniority with the predecessor.

- C. If at any time a successor contractor determines that fewer employees are required to perform the new Contract than were required by the terminated Contractor (and Subcontractors, if any), the successor Contractor shall retain employees by seniority within job classification.
- D. During such 90-day period, the successor Contractor (or Subcontractor, where applicable) shall maintain a preferential hiring list of eligible covered employees not retained by the successor Contractor (or Subcontractor) from which the successor Contractor (or Subcontractor) shall hire additional employees.
- E. Except as provided in subsection C of this section, during such 90-day period, the successor Contractor (or Subcontractor, where applicable) shall not discharge without cause an employee retained pursuant to Section. Cause for this purpose shall include, but not be limited to, the employee's conduct while in the employ of the terminated Contractor or Subcontractor that contributed to any decision to terminate the contract or subcontract for fraud or poor performance, excluding permissible union-related activity.
- F. At the end of such 90-day period, a successor Contractor (or Subcontractor, where applicable) shall perform a written performance evaluation for each employee retained pursuant to this Section. If the employee's performance during such 90-day period is satisfactory, the successor Contractor (or Subcontractor) shall offer the employee continued employment under the terms and conditions established by the successor Contractor (or Subcontractor) or as required by law.
- G. Contractors must include a provision in all subcontracts requiring Subcontractors to comply with the obligations imposed by this Section.

Enforcement

- A. An employee who has not been hired or has been discharged in violation of this Section by a successor Contractor or its Subcontractor may bring an action in the Superior Court of the State of California, as appropriate, against the successor Contractor and, where applicable, its Subcontractor, and may be awarded back pay, including the value of benefits, for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:
 - 1. The average regular rate of pay received by the employee during the last three years of the employee's employment in the same occupation classification; or
 - 2. The final regular rate received by the employee.

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- B. If the employee is the prevailing party in any such legal action, the Court shall award reasonable attorney's fees and costs as part of the costs recoverable.

Successor's Prior Employees

A successor Contractor or Subcontractor may replace an employee otherwise entitled to be retained pursuant to this Section with a person employed by the Contractor or Subcontractor continuously for twelve (12) months prior to the commencement of the successor contract or subcontract in a capacity similar to that proposed under the successor contract or subcontract. This section shall apply only where the existing employee of the successor Contractor or Subcontractor would otherwise be laid off work as a result of the award of the successor contract.

Collective Bargaining Agreements

Notwithstanding anything to the contrary in this Section, if the contract conflicts with an existing collective bargaining agreement to which a Contractor or Subcontractor is a party, the collective bargaining agreement shall prevail. However, the Contractor or Subcontractor will be obligated to make good faith efforts to comply with the requirements of this Section that do not conflict with the collective bargaining agreement.

83. PROP J APPROVAL - (Not Applicable to this Contract)

84. ORDERING

- A. Services to be furnished under this Contract shall be ordered by issuance of a Direct Purchase Order through a release from the appropriate Citywide Blanket Purchase Order by City departments during the effective period of the contract.
- B. All invoices for payments shall show the Direct Purchase Order Release Number against the Citywide Blanket Purchase Order assigned by Purchaser to include the complete description of services and contract pricing.

85. BILLING

All invoices must show the Contract Number, Citywide Blanket Purchase Order Number, contract item number, complete description of services performed, contract payment terms and contract price.

City, on services covered by this contract, will honor no minimum service order charges. Contractor must accept and process, without any extra charges, orders for any service as requested by City.

Failure to submit invoices with all the required information, or invoices that contain inaccurate information will not be processed for payment.

All discount periods will begin only when City receives a properly completed invoice containing all the required information. Note: Invoices must be submitted in triplicate.

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86. PAYMENT

- A. In accordance with the prices quoted in the successful bid and subject to any applicable discount provision contained in said bid, City agrees to pay for all services at said rate. City shall make payments to Contractor in arrears, for services actually performed, throughout the term of the contract.
- B. Invoices submitted by Contractor must be in a form acceptable to Purchasing and Controller. All amounts paid by City to Contractor shall be subject to audit by City.

87. MULTIPLE AWARDS

Multiple awards may be made for certain or all services. The award would be to a primary contractor and a secondary contractor to ensure adequate levels of uninterrupted service.

Contractor will be notified by contract acceptance which will designate the primary or secondary contractor.

- A. If the primary contractor fails to provide service for any contract items by the required date, then the secondary contractor agreeing to act as a secondary contractor will be required to provide said service. City will pay secondary contractor directly for the service. The secondary contractor shall continue to provide the required service, as required pursuant to the contract, until the primary contractor demonstrates to the satisfaction of City that they are ready, willing and able to provide said service to City.
- B. Purchaser reserves the right to request service not really available from the secondary contractor from any other source if Purchaser deems it is in the public interest to take such action.

88. CHANGE OF CONTRACTOR

Should this contract necessitate a change in contractor, both contractors shall work to a systematic change in collaboration with each City department as required. The newly awarded contractor shall assume the responsibility to supply all services under this Contract only after receiving confirmation from City that they have provided all Bond and Insurance requirements. Both contractors shall enter into an Assignment and Assumption Agreement.

89. RESOURCE CONSERVATION ORDINANCE *(Not applicable to this Contract)*

90. ENTIRE AGREEMENT

This contract sets forth the entire Contract between the parties, and supersedes all other oral or written provisions.

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SPECIAL CONDITIONS (Continued)

91. BID SUBMITTAL INSTRUCTIONS Bids must be received at:

**Office of Contract Administration
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102**

By 2:00 PM, Friday March 9, 2007. Late bids will not be considered.

Bids transmitted by FAX or any type of electronic mail will not be accepted.

Bidders are to return the required documents, which include:

- A. Page 1 of the Contract Proposal completed and signed
- B. Bid Sheet(s) for items being bid
- C. All questionnaires and forms, completed and signed (See "Standard Bid Forms, P-225" attached to this Contract Proposal.)
- D. Bid Security (See Special Condition 71)
- E. Bidders shall mail bid in an envelope clearly marked with the bid number and due date in the lower left corner.

Bids must be submitted on the enclosed Bid Sheet(s).

Prices should be clearly written by typewriter or pen and ink.

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

For more information, contact:

Jeannie Louie
Supervising Purchaser
(415) 554-3166
E-mail: jeannelouie@sfgwater.org

End of Special Conditions

