

File No. 250331

Committee Item No. 5

Board Item No. 20

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date April 23, 2025

Board of Supervisors Meeting Date April 29, 2025

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Contract/Agreement
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

OTHER (Use back side if additional space is needed)

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Executed Agreement 11/24/2015</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Amendment No. 2 11/13/2019</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Amendment No. 3 1/18/2022</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Amendment No. 2 2/21/2025</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Request for Proposal 6/12/2024</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>PUC Resolution No. 15-0175 8/11/2015</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>PUC Resolution No. 17-0013 1/24/2017</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>PUC Resolution No. 18-0090 5/22/2018</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>PUC Resolution No. 21-0092 6/8/2021</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>PUC Resolution No. 24-0112 5/14/2024</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>PUC Resolution No. 25-0054 3/25/2025</u>
<input type="checkbox"/>	<input type="checkbox"/>	<u></u>

Completed by: Brent Jalipa Date April 17, 2025

Completed by: Brent Jalipa Date April 24, 2025

1 [Professional Services Agreement - Calpine Energy Solutions LLC - Community Choice
2 Aggregation Program - Meter Data Management, Billing, and Customer Care Services - Not to
3 Exceed \$17,000,000]

4 **Resolution approving and authorizing the General Manager of the San Francisco Public**
5 **Utilities Commission (SFPUC) to execute Contract No. PRO.0297, SFPUC Customer**
6 **Administrative Services Community Choice Aggregation Program, with Calpine**
7 **Community Energy, a Division of Calpine Energy Solutions, LLC, in the amount not to**
8 **exceed \$17,000,000 for a duration of three years, commencing on April 30, 2025,**
9 **through April 30, 2028, to provide meter data management, billing, and customer care**
10 **services; and to authorize the SFPUC General Manager to enter into any amendments**
11 **or modifications to the Agreement that the General Manager determines, in**
12 **consultation with the City Attorney, are in the best interests of the City, do not**
13 **materially increase the obligations or liabilities of the City, and are necessary or**
14 **advisable to effectuate the purposes and intent of the Resolution, pursuant to Charter,**
15 **Section 9.118.**

16
17 WHEREAS, CleanPowerSF is the City and County of San Francisco's Community
18 Choice Aggregation Program (CCA), offering cost-effective, cleaner energy to homes and
19 business within the City; and

20 WHEREAS, The San Francisco Public Utilities Commission (SFPUC) requires critical
21 back-office services to support the operations of CleanPowerSF; and

22 WHEREAS, On August 11, 2015, by Resolution No. 15-0175, the SFPUC Commission
23 awarded Agreement No. CS-247[R], Customer and Administrative Services for Community
24 Choice Aggregation Program, to Noble Americas Energy Solutions LLC, in the amount of
25

1 \$5,600,000 and with a term of three years, concluding on October 31, 2018, to provide meter
2 data management, billing, and customer care services for CleanPowerSF; and

3 WHEREAS, On January 24, 2017, by Resolution No. 17-0013, the SFPUC approved
4 the assignment and assumption of Agreement No. CS-247[R] from Noble Americas Energy
5 Solutions LLC to Calpine Energy Solutions LLC (herein after "Calpine"); and

6 WHEREAS, CS-247[R] was amended four times to extend the term and amount; the
7 most recent modification increased the agreement amount by \$2,500,000 for a total not to
8 exceed agreement amount of \$34,745,425.00 and extended the term until April 30, 2025; and

9 WHEREAS, PRO.0297 replaces CS-247[R] and is necessary to ensure the continuity
10 of essential business services to CleanPowerSF; and

11 WHEREAS, The contract work consists of 1) management of CleanPowerSF customer
12 accounts and bill calculation; 2) exchange and tracking of customer usage, billing and
13 payment data with Pacific Gas & Electric Co; 3) provision of a customer relationship
14 management system that is integrated with the billing system; and; 3) preparation of
15 settlement quality meter data for submission to the California Independent System Operator;
16 and

17 WHEREAS, On June 12, 2024, the SFPUC advertised a Request for Proposals for this
18 work; and

19 WHEREAS, The SFPUC and Contract Monitoring Division staff, upon review of the
20 proposal scores, determined that Calpine is the highest ranked firm based on the established
21 scoring criteria; and

22 WHEREAS, Contract Monitoring Division waived the Local Business Enterprise
23 subconsultant participation requirement for this contract; and

1 WHEREAS, Funds for Contract No. PRO.0297, SFPUC Customer Administrative
2 Services Community Choice Aggregation Program, are available from the Hetch Hetchy
3 CleanPowerSF Operations Fund; and

4 WHEREAS, On March 25, 2025 by Resolution No.25-0054 the SFPUC Commission
5 authorized the General Manager to execute Contract No. PRO.0297 SFPUC Customer
6 Administrative Services Community Choice Aggregation Program, with Calpine in the amount
7 not to exceed \$17,000,000 for a duration of three years, commencing on April 30, 2025,
8 through April 30, 2028, to provide meter data management, billing, and customer care
9 services, pursuant to Charter, Section 9.118; and

10 WHEREAS, While Calpine submitted a bid not to exceed \$12,623,526 the authorized
11 Contract amount is not to exceed \$17,000,000 to account for tasks in the Contract for which
12 the scope of services is not defined and will be determined later, and for which SFPUC
13 estimates costs of \$75,000/year for email marketing; \$100,000/year for Load Management
14 Standard (LMS) support and \$3,800,000 for ramp up costs associated with the potential
15 introduction of regulatory billing changes; and

16 WHEREAS, The Agreement includes a limited City indemnity clause for damage
17 caused to Calpine's systems; now, therefore be it

18 RESOLVED, That this Board of Supervisors hereby authorizes the General Manager of
19 the SFPUC to execute Contract No. PRO.0297, SFPUC Customer Administrative Services
20 Community Choice Aggregation Program, with Calpine in the amount not to exceed
21 \$17,000,000, and with a duration of three years, starting April 30, 2025 through April 30, 2028,
22 to provide meter data management, billing, and customer care services, and to enter into any
23 amendments or modifications to the Contract that the General Manager determines, in
24 consultation with the City Attorney, are in the best interest of the City; do not materially
25 increase the obligations or liabilities of the City or materially diminish the benefits to the City;

1 are necessary or advisable to effectuate the purposes and intent of the Resolution; and are in
2 compliance with all applicable laws, including the City Charter; and, be it

3 FURTHER RESOLVED, That within 30 days of the Agreement being fully executed by
4 all parties to this contract, the SFPUC shall provide signed copies of the contract amendment
5 to the Clerk of the Board for inclusion in the official file.

Item 5 File 25-0331	Department: Public Utilities Commission
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> The proposed resolution would approve a customer administrative services contract between the San Francisco Public Utilities Commission (SFPUC) and Calpine Community Energy (Calpine) in the amount not to exceed \$17,000,000 for a duration of three years, commencing on April 30, 2025, through April 30, 2028, to provide meter data management, billing, and customer care services. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> Following a competitive Request-For-Proposals, Calpine Community Energy received the highest evaluation score and was selected to continue providing CleanPowerSF's customer administrative services. Calpine is audited annually through a System and Organization Controls audit to verify that it has an effective system of controls. The most recent audit for the period of January through December 2023 had no findings. In addition, CleanPowerSF hires an auditor for Green-e Energy Certification, which reports having a billing accuracy rate of 99.989 percent and a billing timeliness (3 days or less) of 99.996 percent. The contractor must commit at least \$200,000 in direct community benefits and submit, within 60 days of the Notice of Contract Award (following Board of Supervisors approval), a Social Impact Partnership Work Plan that names the beneficiaries, dollar amounts, performance benchmarks, and schedule for delivery. Local Business Enterprise requirements were waived due to the lack of feasible local subcontracting opportunities. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> The proposed resolution would authorize a \$17,000,000 contract with Calpine Energy Solutions LLC, funded by CleanPowerSF customer revenues. Each active customer will have a meter rate of \$0.8433 per month, nearly 15 percent cheaper per meter than the current contract. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> Approve the proposed resolution. 	

MANDATE STATEMENT

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

BACKGROUND

In May 2016, the San Francisco Public Utilities Commission (SFPUC) launched the CleanPowerSF Community Choice Aggregation (CCA) program to provide cleaner and more sustainable electricity supply to San Francisco customers at comparable rates to those offered by Pacific Gas & Electric Company (PG&E). CleanPowerSF uses clean and renewable energy purchased from various power producers and clean energy technologies, including SFPUC's Hetch Hetchy hydroelectric power. SFPUC contracts with Calpine Energy Solutions LLC (Calpine) for CleanPowerSF meter data management, customer care, and billing services, which has a term November 20, 2015, to April 30, 2025, and was approved by the Board of Supervisors most recently in July 2024 (File 24-0582).

Request-For-Proposals

On June 13, 2024, the SFPUC advertised a Request-For-Proposals (RFP) for this work, with proposals due by July 24, 2024. The SFPUC and Contract Monitoring Division staff, upon review of the proposal scores, determined that Calpine is the highest ranked firm based on the established scoring criteria. Proposals were evaluated based on several key criteria, including Technical Written Proposals (895 points), Fee Schedule (100 points), Diversity, Equity, and Inclusion Submittal (5 points), Social Impact Partnership Bonus (44.75 points). Organizations that agreed to the Community Benefits provision were provided with a bonus between 7.5 and 10 percent of their subtotal as detailed below in Exhibit 1.

Exhibit 1: Request-For-Proposals Score Summary (1044.75 Possible Points)

Evaluation Phase	Calpine Community Energy	Sacramento Municipal Utility District
Written (895)	831.93	773.55
Fee Schedule (100)	100.00	74.00
DEI (5)	5.00	5.00
Subtotal	936.93	852.55
SIP Bonus Points (44.75)	41.05	0
Total	977.98	852.55
Rank	1	2

Source: SFPUC

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a customer administrative services contract between the San Francisco Public Utilities Commission (SFPUC) and Calpine Community Energy (Calpine) in the amount not to exceed \$17,000,000 for a duration of three years, commencing on April 30, 2025, through April 30, 2028, to provide meter data management, billing, and customer care services.

The contract may be extended by up to an additional three years, however doing so would require Board of Supervisors approval.

Scope of Work

The contractor is responsible for all aspects of billing, data handling, customer care management and phone communication systems, and customer demand reporting for CleanPowerSF. This includes collecting usage data from PG&E, ensuring timely and accurate bills, updating customer records, and maintaining secure data backups. The contractor also manages the customer management system and phone communication tools used by CleanPowerSF staff, such as call-tracking and automated messaging systems. In addition, the contractor generates regular energy-use reports, submits data to the California Independent System Operator, and supports renewable energy compliance.

The contract also includes two subcontractors: LanguageLine Solution LLC, for interpretation services and See Change Institute, which provides behavior science consulting to support targeted customer communications initiatives for low income and other customer groups.

Local Business Enterprise

The Contract Monitoring Division waived the LBE requirement for this contract because no feasible local subcontracting opportunities were identified for the specialized services offered under this contract.

Community Benefits Commitments

The contractor is required to commit a minimum of \$200,000 in community benefits in the form of direct financial contributions. Within 60 days of the Notice of Contract Award (which occurs after the Board of Supervisors review and other approvals), they must submit a Social Impact Partnership (SIP) Work Plan to the SFPUC for review.

The SIP Work Plan, rather than the previously used contract's Appendix A, now lists the chosen beneficiary or beneficiaries, the dollar amount and type of each commitment, performance benchmarks, and an execution schedule. According to the SFPUC, moving beneficiary details to the plan gives contractors flexibility to confirm nonprofit capacity, adjust to changing community needs, and reduce contract amendments. The Work Plan is reviewed with SFPUC staff, approved, and updated annually.

Performance

According to CleanPowerSF, Calpine is audited annually through a System and Organization Controls audit to verify that it has an effective system of controls related to security, availability, processing integrity, confidentiality, and/or privacy. The most recent audit for the period of January through December 2023 had no findings. In addition, CleanPowerSF hires an auditor for Green-e Energy Certification, which includes annual spot checks for billing accuracy for SuperGreen and SuperGreen Saver customers. Calpine reports having a billing accuracy rate of 99.989 percent and a billing timeliness (3 days or less) of 99.996 percent.

FISCAL IMPACT

The proposed resolution would authorize a \$17,000,000 contract with Calpine Energy Solutions LLC. The breakdown of the estimated budget is detailed below in Exhibit 2. The proposed not to exceed amount is sufficient for the initial three-year term of the contract, but not the optional three-year extension term.

Exhibit 2: Total Contract Budget (April 2025 – April 2028)

Description	Amount
Billing and Data Management and Exchange	\$11,991,726
Growth in number of accounts over time	379,397
Customer Communications Systems	568,800
Additional Deliverables	
Email Marketing Platform (ODC)	225,000
Load Management Standards Compliance	300,000
Forecasting Services	225,000
Behavioral Science Consulting (50 hours)	30,000
Additional Data Storage Fee	207,900
Customer Analytics and Program Management Services	1,500,000
PG&E Billing System Modifications Contingency	1,572,177
Total	\$17,000,000

Source: SFPUC

Note: The subcontractor See Change delivers the Behavior Science Consulting Line Item (\$30,000) to support outreach to low-income customers for SFPUC's SuperGreenSaver discount program. LanguageLine provides live translation services for non-English speaking customers and the work is included as a portion of the Customer Communications Systems line item.

Meter and Data Rates

The Contractor bid during the RFP process a rate of \$0.8433 per month for each active customer meter that is enrolled and served by CleanPowerSF each month. That is nearly 15 percent cheaper per meter than was previously budgeted for the previous 6-month extension term of the last contract. Contractor also made a bid for a rate of \$0.04 per month for each active customer

meter that is enrolled and served by CleanPowerSF each month for use of Contractor's customer communications technology platform. If SFPUC chooses to increase data retention from 24 months to 60 months, that will add \$0.015 per meter to the monthly rate.

Labor Rates

The Additional Deliverables noted above will billed at a labor rate of \$200.00 per hour unless otherwise agreed upon in writing by both parties prior to the commencement of additional work. Beginning in 2026, Contractor's payment in effect for Services listed in this Agreement can be escalated annually by the Consumer Price Index West Region. However, the maximum labor rate is capped at \$220 per hour, unless the SFPUC Contract Manager and Contract Administration Bureau Manager authorize an increase to the rate in writing.

Source of Funds

The cost of the proposed contract is funded by CleanPowerSF customer revenues.

RECOMMENDATION

Approve the proposed resolution.

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

Agreement between the City and County of San Francisco and

Calpine Community Energy, LLC

PRO.0297

**SFPUC Customer Administrative Services
Community Choice Aggregation**

This Agreement is made this [Insert day] day of [Insert month], 2025, in the City and County of San Francisco (“City”), State of California, by and between Calpine Community Energy, LLC (“Contractor”) and City.

Recitals

WHEREAS, the San Francisco Public Utilities Commission, CleanPowerSF (“SFPUC” or “CleanPowerSF”) wishes to procure comprehensive and integrated customer data management, billing, and data exchange services from Contractor; and

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

WHEREAS, Contractor was competitively selected pursuant to Sourcing Event ID PUC.PRO.0297; and

WHEREAS, this is a contract for Services and the Local Business Enterprise (“LBE”) subcontracting participation requirement for the Services has been waived by the Contract Monitoring Division of the City (CMD); and

WHEREAS, on January 30, 2024, the SFPUC obtained approval for the Agreement from the Civil Service Commission under PSC number 49686 – 23/24 in the amount of \$17 million for the period of five years and four weeks; and

WHEREAS, on March 25, 2025, the City’s Public Utilities Commission approved this Agreement by Resolution No. 25-0054; and

WHEREAS, on [Insert date of Board action], the City’s Board of Supervisors approved this Agreement pursuant to San Francisco Charter Section 9.118 by Resolution No. [Insert resolution number].

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Affiliate” means in relation to a Party, any entity directly or indirectly controlled by such Party, any entity that directly or indirectly controls such Party, or any entity directly or indirectly under common control with such Party. For this purpose, “control” of a Party means ownership of a majority of the voting power of the Party.

1.2 “Agreement” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.3 “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and the SFPUC.

1.4 “City Data” means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

1.5 “CMD” means the Contract Monitoring Division of the City.

1.6 “Confidential Information” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

1.7 “Contractor” or “Consultant” means Calpine Community Energy, LLC [Insert address of Contractor].

1.8 “Deliverables” means Contractor’s work product resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

1.9 “Effective Date” means the Effective Date stated in the Notice of Contract Award issued by the SFPUC once this Agreement has been fully approved and executed.

~~1.10 “Mandatory City Requirements” means those City laws set forth in the San~~

Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.11 “Party” or “Parties” means the City and Contractor either collectively or individually.

1.12 “Services” means the work performed by Contractor under this Agreement as specifically described in the “Scope of Services” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.13 “Subcontractor” means a third-party entity the Contractor contracts with to provide a specific Service(s) identified herein. “Subcontractor” does not include such third-party entities that the City has contracted with for services under or related to this Agreement or an entity that provides software services that Contractor uses for performance of the Agreement.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the Effective Date and expire three years later, unless earlier terminated as otherwise provided herein.

2.2 The City has the option to extend the term of the Agreement for up to three additional years, as approved by the SFPUC. The agreement may be extended for an additional period past such initial term via further written agreement of the Parties and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

Article 3 Financial Matters

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

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

3.2 **Guaranteed Maximum Costs.** The City’s payment obligation to Contractor cannot at any time exceed the amount certified by City’s Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified

maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 Calculation of Charges. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the General Manager of the SFPUC, in his or her sole discretion, concludes has been satisfactorily performed. In no event shall the amount of this Agreement exceed Seventeen Million Dollars (\$17,000,000). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges" and Appendix B-1, "Fee Schedule." A portion of payment may be withheld until conclusion of the Agreement if agreed to by both Parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any services covered by this Agreement.

3.3.1 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until SFPUC approves the Services delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory delivery of goods and/or Services even if the unsatisfactory character may not have been apparent or detected at the time such payment was made. Goods and/or Services delivered pursuant to this Agreement that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.2 Withhold Payments. If Contractor fails to provide goods and/or Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.3 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, the SFPUC, and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.4 Reserved (LBE Payment and Utilization Tracking System)

3.3.5 Getting paid by the City for Services.

(a) The City and County of San Francisco utilizes the Paymode-X[®] service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit http://portal.paymode.com/city_countyofsanfrancisco.

(b) At the option of the City, Contractor may be required to submit invoices directly in SOLIS. For access to SOLIS, submit a request through

3.3.6 Reserved (Grant Funded Contracts)

3.3.7 Payment Terms.

(a) **Payment Due Date.** Unless City notifies the Contractor that a dispute exists, Payment shall be made within thirty (30) calendar days, measured from (1) the delivery of goods and/or the rendering of services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted electronic payment to Contractor.

(b) Reserved (Payment Discount Terms)

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. 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, records or other data related to the provision of the Services. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final invoice under this Agreement or until after final audit has been resolved, whichever is later. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts with Subcontractors.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6 Reserved (Payment of Prevailing Wages for Trade Work)

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services stated in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.2 Personnel.

4.2.1 Qualified Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. All personnel that are employees of the Contractor are supervised by Contractor in accordance with its internal policies and procedures. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement and the task orders.

4.3 Subcontracting.

4.3.1 Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its Subcontractors throughout the course of the work required to perform the Services. All subcontracts with Subcontractors must incorporate the terms of Article 10, "Additional Requirements Incorporated by Reference," of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.3.2 . City's execution of this Agreement constitutes its approval of the Subcontractors listed in Appendix B-1, Fee Schedule. Consistent with SFPUC policy, any modifications to the list of Subcontractors must be effectuated via City's approved invoice processing system, subject to the written approval of the City, and CMD, as needed.

4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.4.1 Independent Contractor. For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to

control the means or the method by which Contractor performs work under this Agreement. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 Assignment. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code, except that (a) Contractor may assign without such approval to an Affiliate, or to a successor acquiring all or substantially all of the shares, equity and/or the assets of the transferring Party, whether by merger or acquisition, provided that the Affiliate or successor expressly assumes all of Contractor's obligations under this Agreement; and (b) Contractor may assign the revenues owing to it hereunder without approval in connection with any financing or other financial arrangements; however, such assignment shall not release the Contractor from its obligations hereunder. The City's approval of any such Assignment requiring approval is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

4.6 Warranty. Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

Article 5 Insurance and Indemnity

5.1 Insurance.

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

(a) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

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

(c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.

(d) Technology Errors and Omissions Liability coverage, or Professional Liability coverage, with limits of \$10,000,000 for a claim and/or loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the Agreement.

(e) Cyber and Privacy Insurance with limits of \$10,000,000 for each claim and/or loss and \$10,000,000 in the aggregate, providing coverage for:

I. Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

II. Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon, and;

III. Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, personal information, such as name, address, or other personally identifying information.

(f) Reserved. (Pollution Liability Insurance)

5.1.2 Additional Insured Endorsements.

(a) The Commercial General Liability policy must be endorsed to name

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

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) Reserved (Pollution Auto Liability Insurance Additional Insured Endorsement)

5.1.3 Waiver of Subrogation Endorsements.

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

5.1.4 Primary Insurance Endorsements.

(a) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought. Notwithstanding the foregoing, Additional Insureds endorsement will be pursuant to such policy's blanket endorsement grant "as required by written contract".

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought. Notwithstanding the foregoing, waiver of subrogation will be pursuant to policy's blanket endorsement grant "as required by written contract".

(c) Reserved (Pollution Liability Insurance Primary Insurance Endorsement)

5.1.5 Other Insurance Requirements.

(a) Thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 entitled "Notices to the Parties."

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

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

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

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

(f) If Contractor will use any Subcontractor(s) to provide Services, subcontractor insurance will be required as appropriate for the work scope as determined by the Contractor. Contractor shall require the Subcontractor(s) to include the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds on Subcontractor's Commercial General Liability and Commercial Automobile Liability policies.

5.2 Indemnification.

5.2.1 Subject to the limitations herein, Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all loss, cost, damage, injury, and liability that may arise from a third-party claim resulting from (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) non-compliance with applicable law as further described in Section 11.10 below, or (iv) strict liability imposed by any law or regulation, to the extent such loss, damage, injury, violation or strict liability arises directly from Contractor's performance of this Agreement, including but not limited to the use of facilities or equipment provided by City or others, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City or CleanPowerSF. 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.

5.2.2 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.

5.2.3 Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the

patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

5.2.4 If Contractor suffers loss, cost, damage, injury, liability, and claims of any kind of type attributable to the City's use of or access to, or the City's other third party contractor's use of or access to, Contractor's systems then City shall indemnify and save harmless Contractor and its officers, agents, and employees from and against any and all loss, cost, damage, injury, liability, and claims thereof.

Article 6 Liability of the Parties

6.1 Limitation of Liability.

(a) FOR BREACH OR DEFAULT BY A PARTY ARISING FROM ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED HEREIN, SUCH REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

(b) IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, CITY'S LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

(c) IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, CONTRACTOR'S LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, EXCEPT AS SET FORTH IN APPENDIX A, TASK 1, SECTION 9, AND CONTRACTOR SHALL NOT BE LIABLE REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT, INDEMNITY, OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 Liability for Use of Equipment. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 Liability for Incidental Damages. Contractor shall not be responsible for incidental damages except as set forth in Appendix A, Task 1, Section 9.b.

Article 7 Payment of Taxes

7.1 Contractor to Pay All Taxes. Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest

taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

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

7.2.1 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.

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

7.2.3 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.

7.2.4 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.

7.3 Withholding. Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience. [Reserved]

8.2 Termination for Default; Remedies.

8.1.1 Each of the below shall constitute an immediate event of default (“Event of Default”) by a Party under this Agreement. The Party responsible for the default is the “Defaulting Party”.

(a) A Party fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims
4.5	Assignment

(b) A Party fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default is not cured within ten days after written notice is received by the such Party.

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

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

8.1.2 On and after any Event of Default, the non-defaulting Party shall have the right to suspend its obligations and/or exercise any legal remedies, including, without limitation, the right to terminate this Agreement and seek its damages. In addition, if the City is the non-defaulting Party, it shall have the right to calculate, and invoice Contractor for and/or offset from any amounts due to Contractor under this Agreement, all its damages, losses, costs or expenses incurred as a result of an Event of Default by the Contractor, subject to the limitations in this Agreement. If the Contractor is the non-defaulting Party, it shall have the right to calculate, and invoice the City for, its damages, losses, costs or expenses incurred as a result of an Event of Default by the City, subject to the limitations in this Agreement. The amounts calculated and invoiced by the non-defaulting Party under this Section shall be due by the Defaulting Party within 10 (ten) days of the date of the invoice. This Section 8.1.2 shall survive termination of this Agreement.

8.1.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Except as expressly stated herein, nothing in this Agreement shall constitute a waiver or limitation of any rights that either Party may have under applicable law.

8.1.4 Any notice of default must be sent by registered mail to the address set forth

in Article 11.

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

8.3 **Rights and Duties upon Termination or Expiration.**

8.3.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement

6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1	Termination for Default; Remedies	Article 13	Data and Security
9.1	Ownership of Results	--	--

8.3.2 Subject to the survival of the Sections identified in Section 8.3.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights In Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. Provided, however, that consistent with the below, Contractor's intellectual property, including, but not limited to, Contractor's internal systems, know-how, programs, and policy templates shall remain the exclusive property of Contractor. However, , Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Intellectual Property.** If, in connection with Services, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, including but not limited to Deliverables, then all right, title, and interest, including without limitation, any patent, trademark, and/or copyright in such works of authorship shall be vested exclusively in Contractor, provided however, that City shall have a perpetual, non-exclusive license to such works as may be needed to provide customer care services for CleanPowerSF, to the extent the City performs such services (e.g. call center telephone scripts and similar).

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4

of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Article 141. Information about and the text of Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of Article 141, irrespective of the listing of obligations in this section.

10.5 Nondiscrimination Requirements.

10.5.1 Nondiscrimination in Contracts. Contractor shall comply with the provisions of Articles 131 and 132 of the San Francisco Labor and Employment Code. Contractor shall incorporate by reference in all subcontracts the provisions of Article 131.2(a), 131.2(c) – (i), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Labor and Employment Code Section 131.2(b). Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Labor and Employment Code Section 131.2(b).

10.6 Local Business Enterprise and Non-Discrimination in Contracting

Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

10.7 Minimum Compensation Ordinance. If Labor and Employment Code Article 111 applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of the Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

10.8 Health Care Accountability Ordinance (HCAO). If Labor and Employment Code Article 121 applies to this contract, Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 121.3 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. Information about and the text of Article 121, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this section.

10.9 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City

elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Reserved (Slavery Era Disclosure)

10.13 Reserved (Working with Minors)

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Article 142, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Labor and Employment Code ("Article 142"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, irrespective of the listing of obligations in this section. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in Article 142.

10.14.2 The requirements of Article 142 shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Article 142 shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Reserved (Public Access to Nonprofit Records and Meetings)

10.16 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 Reserved (Distribution of Beverages and Water)

10.18 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.19 **Reserved (Preservative Treated Wood Products).**

Article 11 General Provisions

11.1 **Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: [Insert name or title of department contact person, name of department, mailing address, and e-mail address]

To Contractor: [Insert name of Contractor, mailing address, and e-mail address]

Any notice of default must be sent by email or trackable overnight mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. Notice by email is effective on the business day it is actually received. Notice by trackable overnight mail shall be effective on the next business day after it was sent.

11.2 **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state disability rights legislation.

11.3 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records in the City's possession related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. Seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any agreed to amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of

services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.2 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

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

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

11.9 Entire Agreement. This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 Compliance with Laws. Contractor must at all times comply with applicable state and federal laws, and, in addition those local codes, ordinances and regulations described and agreed to herein (together, the "Law").

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

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

11.13 Order of Precedence. The Parties agree that this Agreement, including all appendices, sets forth the Parties' complete agreement. If the Appendices to this Agreement include any term that conflicts with the main body of the Agreement, the terms in the main body of the Agreement shall take precedence. Any hyperlinked terms included in Contractor's proposal shall have no legal effect.

11.14 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

Article 12 Department Specific Terms

12.1 Reserved

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 Protection of Private Information. If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 Confidential Information. In the performance of Services, Contractor may have access to, or collect on City's behalf, City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City's behalf, such information must be held by Contractor in confidence and used only in performing the Agreement, or as further described below. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

13.2 Payment Card Industry ("PCI") Requirements.) [Reserved]

13.3 Management of City Data and Confidential Information.

13.3.1 Use of City Data and Confidential Information. Contractor agrees to hold City's Data received from, or collected on behalf of, the City, in strictest confidence. Contractor shall not use or disclose City's Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Data outside the United States is subject to prior written authorization

by the City. Access to City's Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use, except that Contractor shall have the right to use data collected and used to perform the Services in an aggregated and anonymized form and incorporate such a and a data within databases and processes. Except as stated herein, this Agreement does not confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.3.2 Disposition of Confidential Information. Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall, after being notified of proper location for data relocation, promptly, but in no event later than sixty (60) calendar days, return all City Data, provided however that City Data need not be returned, deleted, or destroyed if i) it is only aggregated and anonymized, ii) it is found in electronic format as part of Contractor's (or Contractor's representatives or contractors) data storage/archival/retention process, or iii) Contractor is required to retain such information pursuant to law or regulation, in which case Contractor may retain one copy. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data, except as stated above, from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

13.4 Ownership of City Data. The Parties agree that, as between them, all rights to City Data that the City provided to Contractor for use in performance of this Agreement is the exclusive property of the City.

13.5 Loss or Unauthorized Access to City's Data; Security Breach Notification. Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any "Leak") within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. Contractor shall pay for the provision to the affected individuals of twenty-four (24) months of free credit monitoring services, if the Leak involved information of a nature

reasonably necessitating such credit monitoring. The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

Article 14 MacBride And Signature

14.1 MacBride Principles - Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

CITY

Recommended by:

Dennis J. Herrera
General Manager
San Francisco Public Utilities Commission

Approved as to Form:

David Chiu
City Attorney

By: _____
[Insert name of Deputy City Attorney]
Deputy City Attorney

Approved:

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

By: _____

CONTRACTOR

Calpine Community Energy, LLC

Sean Fallmer
President

City Supplier Number: [Supplier number]

Appendices

- A: Scope of Services
- B: Calculation of Charges
- B-1: Fee Schedule

Appendix A Scope of Services

- 1. Description of Services.** Contractor agrees to perform the following Services:

TASK 1 BILLING PROCESS MANAGEMENT

CleanPowerSF's customer billing process will be principally administered through Contractor, including critical processes outlined in CleanPowerSF's Services Agreement with PG&E and PG&E's Rule 23. Contractor will be responsible for:

1. Obtaining all customer usage data from PG&E's meter data management agent (MDMA) server to allow for timely billing (according to PG&E's requirements).
2. Maintaining and communicating the amount to be billed by PG&E for services provided by CleanPowerSF, according to PG&E's applicable billing window.
3. Receiving and maintaining all data related to payment transactions toward CleanPowerSF's charges from PG&E after payment is received by PG&E customers.
4. Completing the technical testing of all necessary electronic interfaces with PG&E, which provide for the communication by Internet and Electronic Data Interchange (EDI) between the Contractor and PG&E to confirm system compatibility related to CCASRs, billing collections, meter reading, and electricity usage data.
5. Demonstrating successful completion of all standard PG&E technical testing prior to the customer enrollment period, and have the capability and signed agreements necessary to communicate or exchange the information using EDI, Internet, or an electronic format acceptable to PG&E.
6. Maintaining rate schedules provided by CleanPowerSF, supporting rate changes as needed, and ensuring that rates are charged appropriately to CleanPowerSF customers.
7. Supporting billing related programs via reporting, adjustments to enrolled customers, and other related needs as requested by CleanPowerSF.
8. Managing ad hoc billing needs at the request of CleanPowerSF staff with ten business days prior notice.
9. Service Levels. In the performance of Services above:
 - a. Errors in the Billing Process Management Services above that do not result in an error on an actual bill will be corrected by the Contractor in a commercially reasonable manner but will not result in an Event of Default.
 - b. Contractor will bill with 98% accuracy on a monthly basis. Errors in the Billing Process Management Services that do not result in more than a 2% error in billing accuracy based on the number of accounts billed, as measured on a monthly basis, will not result in an Event of Default.
 - (i) For bill ready billing, accuracy means accurate bill calculations are

delivered to the utility.

(ii) For rate ready billing, to the extent applicable, accuracy is defined as confirmation of accurate rate applications and calculations. Any mismatches shall be raised with the applicable utility within 2 business days and commercially reasonable efforts shall be made to resolve them within 2 billing cycles.

c. Contractor will bill with 98% billing timeliness as measured on a monthly basis. For the avoidance of doubt, timeliness in the context of bill ready bills means accurate bill calculations are delivered by the close of the billing window with the utility. Errors that do not result in more than 2% untimely bills of the number of accounts billed, as measured on a monthly basis, will not be an Event of Default as long as any delayed bill calculations are delivered in a commercially reasonable timeframe.

d. Any billing error that can and is corrected through a rebill is not an Event of Default.

e. Any billing error that is not corrected through a rebill pursuant to direction from CleanPower SF will not be an Event of Default.

f. Contractor will apply commercially reasonable efforts to remedy billing errors for any customer in a timely manner and will remedy such errors in no more than two billing cycles once the error is known to the Contractor. Errors that are remedied in this manner will not result in an Event of Default.

g. For errors in that result in more than a 2% error in accuracy or timeliness as measured and that are not remedied in accordance with the provisions above (“Unremedied Errors”), Contractor shall pay City’s cost of funds (as defined below) incurred during any payment delay from a customer due to an Unremedied Error that was not caused by the utility or the CleanPowerSF and that did not result from a billing hold discussed by Contractor and CleanPowerSF. The City’s cost of funds shall be the simple interest accruing at the prime interest rate as established by the Wall Street Journal on any amounts that are not paid due to an Unremedied Error during a “Delinquent Period.” A “Delinquent Period” shall commence on the latest date that the amount(s) in question could have been paid to City without being delinquent, had the amount been accurately and timely billed. The Delinquent Period shall end when Contractor has corrected all such billing errors for the amounts in question and accurate information is delivered to PG&E.

TASK 2 CUSTOMER DATA MANAGEMENT

Data management and data exchanges with PG&E will be primarily managed through Contractor. Storage and management of customer data in a secure, scalable and accessible fashion is critical to CleanPowerSF’s operations. Contractor is not responsible or liable for a failure to perform the Customer Data Management Services as described below to the extent such failure to perform is due to the negligence, gross negligence, or willful misconduct of the applicable utility, or CleanPowerSF or its vendor. Under this Task, Contractor will be responsible for:

1. Maintaining an accurate customer database of all customers offered The City's CCA service. Identify each customer's contact and account information, enrollment status, tariff election(s), billed usage and demand, payment history, on-site generating capacity, if applicable, and any correspondence with the customer as well as other information as needed.

2. Processing requested changes to a customer's choice of services, or community choice aggregation service requests (CCASR), including but not limited to:

a. Enrollment in CleanPowerSF's default and voluntary rate schedule options;

b. Enrollment in Net Energy Metering (NEM), Net Billing Tariff, or other similar billing programs; and

c. Customer initiated returns to bundled utility service or customer initiated returns to direct access service.

d. To the extent there is failure to perform the Services outlined in this Task 2, Section 2, such failure to perform will not be an Event of Default, if Contractor uses commercially reasonable efforts to correct such failure in a timely manner once the failure to perform is known to the Contractor.

3. Maintaining an accessible archive, during the term of the Agreement, of billing and usage records of invoice details and invoiced usage volumes only for CleanPowerSF customers for no less than five (5) years and providing that archive to CleanPowerSF or its designee at the end of the term, in an industry standard output.

4. Maintaining and communicating as needed records of net-energy metering credits, as well as usage and generation on a monthly, annual and lifetime basis, during the term of the Agreement, for no less than five years, for CleanPowerSF customers participating in Net Energy Metering or similar programs, and providing these records to CleanPowerSF or its designee at the end of the term, in an industry standard output. As requested by CleanPowerSF staff, support data analysis and processing for NEM related processes or for similar programs.

5. Storing and maintaining all customer data in compliance with California Public Utilities Commission regulations (as outlined in D. 12-08-045 Attachment B), \ and Contractor's own data privacy policy.

6. Developing and deploying a data back-up system to provide risk management support.

7. Support data management planning, including providing recommendations to optimize the architecture of CleanPowerSF systems and data to support business optimization. Support for this task is subject to mutual agreement between the Parties.

8. Service Levels for Customer Data Management Services:

- a. Contractor will use commercially reasonable efforts to perform such Services in an accurate and timely manner.
- b. To the extent there is failure to perform these Services in

accordance with the above, Contractor will use commercially reasonable efforts to correct such failure to perform in a timely manner once such is known to the Contractor, to the extent such correction is necessary. As long as such failures are remedied as described above, they will not be an Event of Default.

- c. To the extent data is not retained consistent with the above Services, Contractor will contact the applicable utility to attempt to regain the lost data. Both parties acknowledge and agree that it may not be possible to gain or regain the historical billing volume data from the applicable utility.

TASK 3 TECHNICAL CUSTOMER COMMUNICATIONS SERVICES

Contractor will be responsible for providing functionality to support CleanPowerSF customer service and staff interactions with customers. This includes:

1. Providing and resourcing support for a Customer Relationship Management (CRM) system to support CleanPowerSF's in-house call center, key accounts managers, and program staff, with the following minimum characteristics:

- a. The CRM should provide functional access to customer account data in order to enable individual customer support; this includes usage and billing data as well as account details such as rate class and contact information;

- b. The CRM should provide the ability to track customer interactions through notes, call records and mailings;

- c. The CRM should provide the ability for users to easily create exportable reports and customer lists that include daily call stats that can be accessed at any time to maintain service quality;

- d. The CRM should provide the flexibility to support and record customer interaction with a variety of CleanPowerSF programs; and

- e. The CRM should be modifiable in response to enhancements or requests from CleanPowerSF staff.

2. Provide access to a configurable Interactive Voice Response (IVR) self-service system, according to parameters set by CleanPowerSF, and track how many customers start and complete self-service options without live-agent assistance. Update IVR process map and scripts as requested by CleanPowerSF and provide additional system support as needed.

3. Providing customer mailing lists for new move-in customer notices and opt-out confirmation letters as well as other CleanPowerSF mailing needs, within seven days.

4. Providing an email marketing platform that allows for regular and secure email communication with CleanPowerSF customers, and assisting with developing and managing

customer lists within the email marketing platform.

5. Providing an SMS (Text) messaging application that allows for regular and secure SMS messaging with CleanPowerSF customers.

6. Service Levels for Technical Customer Communications Services:

- a. Contractor will use commercially reasonable efforts to perform such Services in an accurate and timely manner and to provide for the system access and mailing lists identified above.
- b. If there is a system outage, then Contractor will use commercially reasonable efforts to make such systems available and responsive as soon as practicable.
- c. To the extent there is failure to perform these Services in accordance with the above, Contractor will use commercially reasonable efforts to correct such failure to perform in a timely manner once such is known to the Contractor. As long as such failures are remedied as described above, they will not be an Event of Default.

TASK 4 ENERGY DATA MANAGEMENT/REPORTING

CleanPowerSF will rely on Contractor to generate regular customer data and billing related reports and to comply with the requirements of the California Independent System Operator (CAISO) in regard to meter data settlements and other needs as dictated by CleanPowerSF's role as a load serving entity. Contractor will be responsible for:

1. Providing CleanPowerSF regular customer data and billing operations reports on a frequency and a delivery method, as agreed upon, including ensuring that weekly and monthly status reports are provided on a timely basis (e.g., monthly reports are provided within the first week of each calendar month).

- a. If Contractor fails to provide a required report, or there is an error in a report, it will not be an Event of Default, if Contractor uses commercially reasonable efforts to promptly provide the report or a corrected report.

2. Providing CleanPowerSF, or CleanPowerSF's Scheduling Coordinator (SC) with Settlement Quality Meter Data (SQMD) as required by the CAISO. Submit the SQMD directly to the CAISO on behalf of CleanPowerSF or directly to CleanPowerSF's designated SC.

3. Coordinating SQMD submissions with CleanPowerSF and will use commercially reasonable best efforts to submit total hourly data to CleanPowerSF at least three

business days in advance of required submission to CAISO for review and shadow settlement calculations.

4. Preparing the settlement quality meter data (SQMD) in accordance with prudent utility practice, and submitting it in accordance with CleanPowerSF's CAISO-approved SQMD plan to the extent such plan is provided to Contractor with 30 days prior notice.

5. Service Level Agreement for Services 2-4 above.

- a. Contractor will use commercially reasonable efforts to perform Services 2-4 above in an accurate and timely manner.
- b. Contractor will use commercially reasonable efforts to remedy any failure to perform Services 2-4 in an accurate and timely manner.
- c. Contractor will be liable for erroneous data that is submitted, unless the error is caused by the utility's data inaccuracy or incompleteness, but only to the extent the failure to perform is solely due to actions or inactions of the Contractor and such data is less than 95% accurate, as measured between the T52 and T214 settlements.
- d. For purposes of clarification, Contractor will not be liable or responsible for any late meter adjustment sanctions for erroneous data that is submitted to the extent the error was caused by CAISO or the utility's data inaccuracy or incompleteness.
- e. Additionally, Contractor will not be liable for erroneous data that is submitted based on an estimate for Services 2-4 above to the extent the error is attributable to a change in customers' usage due to circumstances that are unforeseen and are material in nature.

6. Serving as a Qualified Reporting Entity (QRE) for (a) certain locally situated, small scale renewable generators supplying electric energy to CleanPowerSF through a feed-in tariff; and/or (b) certain locally situated, small-scale renewable generators that may be owned and/or controlled by the San Francisco Public Utilities Commission (SFPUC) or CleanPowerSF, supplying electric energy to CleanPowerSF through such arrangements, should this service be deemed necessary by CleanPowerSF.

7. Submitting a monthly generation extract file to the Western Renewable Energy Generation Information System (WREGIS) on CleanPowerSF's behalf, which will conform to the characteristics and data requirements set forth in the WREGIS interface control document for QREs.

8. Collecting applicable generation and usage data for CleanPowerSF's renewable energy projects and, consistent with PG&E's applicable meter servicing arrangement, serve as designated "subcontractor" for certain renewable energy projects.

9. Assist CleanPowerSF in completing requisite generation registration materials, as such materials may be required by WREGIS, the California Energy Commission, the California Public Utilities Commission and/or other entities to effect the successful crediting of renewable energy certificates, as appropriate, to CleanPowerSF's WREGIS account.

10. Service Levels for Services 6-9 above:

- a. Contractor shall use commercially reasonable efforts to perform such Services in an accurate and timely manner.
- b. However, Contractor is not responsible or liable for any failure to perform

the Services 6-9 that are due to the actions or inactions of the utility or the entity providing electricity to the CleanPowerSF.

TASK 5 SOCIAL IMPACT PARTNERSHIP

1. Terms and Conditions.

a. Contractor shall provide its Social Impact Partnership (SIP) Commitments (detailed in its SIP Proposal) during the term of the Agreement. The representations, warranties, and other terms contained in Contractor's SIP Proposal will be the basis for a SIP Plan, but are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other persons or entities.

b. Providing SIP Commitments is a deliverable, zero-dollar task. Contractor may not allocate or include any hours or dollars in Contractor's costs for the services under the Agreement in order to perform or deliver the voluntarily proposed SIP Commitments. Contractor shall fund the SIP Commitments independently and such funding shall neither be tied to, nor dependent upon, SFPUC funds or sources of funding, receivable from SFPUC, including retention associated with the Agreement. This requirement of independent funding includes direct financial contributions and any funding related to the performance or delivery of the SIP Commitments. The provision of SIP Commitments does not entitle Contractor to additional work beyond the services specified within the Agreement.

c. Contractor shall commence performance of the SIP Commitments promptly after issuance of the first Notice to Proceed (NTP) for the Agreement. SIP Commitments performed as part of previous contracts or prior to Contractor being awarded the Agreement cannot count towards Contractor's SIP Commitments for the Agreement. If Contractor has established programs or plans that are consistent with the SIP program areas described in the Request for Proposals (RFP), Contractor may continue those programs as part of its SIP Commitments and will be given credit for activities that are performed following the issuance of the first NTP by the SFPUC.

d. Contractor's progress on delivering SIP Commitments must keep pace with Contractor's progress of work on the project. If the SFPUC's SIP Program team determines that Contractor's delivery of SIP Commitments is 10% or more behind its percentage of completion of project work, the SFPUC may withhold from subsequent payments owed to Contractor for its work on the project an amount equal to the value of the portion of SIP Commitments that Contractor should have delivered in order for its delivery of SIP Commitments to keep pace with Contractor's project work.

e. During the term of the Agreement, if Contractor's delivery of SIP Commitments is 10% or more behind its percentage of completion of project work, the City, in its sole discretion, may deem Contractor in material breach of contract. The City's remedies for Contractor's breach may include, at City's sole discretion, but need not be limited to (1) revoke non-compliant Contractor's eligibility for SIP Commitment bonus points on future Covered Contracts; (2) assess liquidated damages; (3) withhold progress payments; (4) withhold release of retention; and/or (5) suspend or terminate the Covered Contract.

f. If Contractor fails to complete its SIP Commitments, the SFPUC may

withhold the value of the uncompleted SIP Commitments and deduct said amount from the sum the SFPUC owes to Contractor for performance of its work, which amount the SFPUC may reasonably determine in its sole discretion. If the SFPUC imposes actual or liquidated damages as a remedy against Contractor for non-compliance, the Controller shall withhold the damages assessed until such time as either Contractor has conceded to or acquiesced in the assessment or, in the event of an appeal, there is a determination no longer subject to judicial review. The Controller shall then deposit the amount withheld into a special account which shall be created for the sole purpose of receiving such funds. The funds deposited into this account shall be distributed by the Controller in accordance with the original SIP Commitments and by the process set forth in the SFPUC Social Impact Partnership Rules and Regulations.

g. If Contractor fails to perform any of its SIP Commitments, Contractor shall be liable for liquidated damages on the Agreement in an amount equal to 110% of the total value of unmet SIP Commitments as determined by the SFPUC in its sole discretion.

h. In the event that fulfillment of SIP Commitments becomes impossible or impracticable, Contractor may request a modification to its SIP Commitments by documenting the impossibility or impracticability of proceeding with its existing SIP Commitments and proposing one or more alternatives subject to review and approval by the SFPUC as provided in the Covered Contract.

i. If the SFPUC modifies or amends the Agreement with a resulting cumulative increase of the total value of the Agreement being 10% or more than its original value, Contractor shall propose an increase to its SIP Commitment. Such increase shall be (1) proportional to the increase in contract value under the amendment(s) or modification(s) and (2) consistent with San Francisco Administrative Code Section 21F.4, and not increase the costs for delivery of the SIP Commitments to the SFPUC.

j. Contractor shall save, keep, hold harmless, and fully indemnify the City and any of its officers or employees from all damages, costs, or expenses in law or equity, or claims for same, that may at any time arise from performance of SIP Commitments. Contractor shall bear sole responsibility and liability, if any, for any breach of the SIP Program provisions of its Covered Contract or San Francisco Administrative Code Chapter 21F.

2. Project Team.

Manager of CCA Account Sales shall serve as the Executive in Charge to manage Contractor's SIP Commitments and provide fiduciary oversight. The Executive in Charge shall ensure that the SIP Commitments listed in the Social Impact Partnership Commitments Table below are delivered to the communities that they are intended to benefit in a transparent and accountable manner. The Executive in Charge shall work with the SIP Coordinator, [Insert name], to organize, plan, track, measure, and report on Contractor's SIP Commitments.

3. SIP Commitments.

Contractor shall provide \$200,000 in direct financial contributions and \$0.00 in volunteer hours. Contractor commits to a minimum total contribution of \$200,000.00 over the term of the Agreement as stated in Contractor's SIP Proposal and the Social Impact Partnership Commitments Table below.

Social Impact Partnership Commitments Table

			(A)	(B)	(C)	(D)	(F)
Social Impact Partnership Program Area	Strategies and Expected Outcomes	Timetable & Duration	Direct Financial Contribution	Volunteer Hours	Volunteer Hourly Rate (rate is standardized and cannot be changed)	Total Value of Volunteer Hours (B x C)	Total Contributions (A + D)
					\$150/hr		
TOTAL			\$200,000.00				

4. Accountability and Deliverables.

Contractor shall provide a description of the accountability methods to ensure that the proposed SIP activities will be delivered in a transparent and accountable manner. Contractor shall provide reports and supporting documentation consistent with the reporting requirements detailed below to establish fulfillment of the SIP Commitments.

Contractor must provide the following deliverables during performance of the Agreement:

a. SIP Plan and Timeline.

Contractor must develop and submit to the SFPUC a SIP Plan and

Timeline within three months of issuance of the Notice of Contract Award. The SIP Plan and Timeline must provide details regarding expenditures, a schedule, and timelines for executing Contractor's SIP Commitments.

b. SIP Commitments and Reporting.

i. Contractor shall deliver the proposed SIP Commitments specified in the SIP Proposal and the SIP Plan. Any proposed changes to the SIP Commitments as set forth herein shall be submitted in writing for review by the SFPUC SIP Program team.

ii. Contractor must submit SIP Commitment progress reports at least quarterly during the term of the Agreement (including any revisions to the work plan and associated timelines as necessary to ensure Contractor completes the measurable commitments during the term of the Agreement) to the SFPUC SIP Program team. The progress reports must identify activities and detail the quantifiable outcomes, key metrics, and the total number of volunteer hours and/or financial commitments performed during that period. As part of the quarterly progress reports, Contractor must also submit documentation to substantiate that the SIP Commitments and any funds or volunteer hours associated therewith were delivered (a non-exhaustive, illustrative list of examples of substantiating documentation includes: timesheets, receipts, cancelled checks, sign-in sheets from events and trainings, formal agreement documents, agendas and presentations from meetings, and statements of activities). Contractor must submit progress reports by the last business day of the month following the close of the previous three-month period.

iii. Contractor shall submit the reports noted above and any other documentation requested by the SIP Program team so the SIP Program team can report on Contractor's progress to the SFPUC Commission, the public and all potentially interested stakeholders in a transparent, accessible and accountable manner. These reports and documentation shall be adequate to enable the SIP Program team, the SFPUC Commission, and all interested stakeholders to evaluate and measure the efficacy of Contractor's SIP Commitments. Contractor shall upon request publicly report all of the requested information to the SFPUC Commission, the public and any interested stakeholders or decision-makers regarding the results of Contractor's SIP Commitments.

iv. Contractor shall also submit a stand-alone annual newsletter to the SFPUC SIP Program team documenting the highlights of the SIP Commitments and outcomes for the year.

5. Statements of Understanding.

Contractor acknowledges that they agree with the following statements:

- a. Contractor is bound by all instructions in the RFP for the SIP Proposal.
- b. Contractor's SIP Commitments must directly benefit the communities, neighborhoods, and/or residents served by or impacted by the SFPUC.
- c. SIP Commitments must provide support by monetary donations or services to or through Beneficiaries (as that term is defined in Administrative Code Section 21F.2 as

follows: “Beneficiary” means an organization that is eligible to receive a Social Impact Commitment. A Beneficiary may be: (1) a nonprofit corporation that has established and maintains valid nonprofit status under Internal Revenue Code Section 501(c)(3), as amended, and all rules and regulations promulgated under that section; (2) an organization that has a fiscal agent that is a nonprofit corporation that has established and maintains valid nonprofit status under Internal Revenue Code section 501(c)(3), as amended, and all rules and regulations promulgated under said section and which provides that organization with fiduciary oversight, financial management, and administrative services related to its operation; or (3) a public school, which may include a public school district, County Office of Education, and/or a public college or university. The following are not eligible Beneficiaries: any (1) City department, office, board, commission, or other entity, or (2) City official or employee or Relative of a City official or employee, unless the resulting benefit is incidental to and not unique to the City official or employee or Relative, but rather benefits the general public or a particular community that is the focus or target of the Social Impact Commitment.

d. SIP Commitments shall not go to, nor benefit, any City department or employee.

e. SIP Commitments are separate from and in addition to any regulatory or legal requirements related to the Agreement.

f. Contractor must deliver its SIP Commitments at no cost to the SFPUC.

g. Contractor is contractually obligated to deliver the total commitment amount listed in the Social Impact Partnership Commitments Table in the Agreement.

h. Only activities commenced after the first NTP for the Agreement is issued will count towards the fulfillment of Contractor’s SIP Commitments.

i. Contractor is obligated to comply with SFPUC’s SIP Commitments reporting requirements.

j. Contractor is obligated to comply with the terms and conditions set forth in this section and in the Agreement.

Contractor shall provide all of the SIP Commitments, consistent with all of the terms of Contractor’s SIP Proposal dated August 15, 2024, which is incorporated herein by this reference. Should there be any conflicts or discrepancies between the language in this section and Contractor’s SIP Proposal, the terms of the language of this section shall prevail as

Contractor and SFPUC's final mutual understanding and agreement.

Contractor must submit all written Deliverables, including any copies, on recycled paper and printed on double-sided pages to the maximum extent possible.

6. 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.

7. Department Liaison. In performing the Services provided for in the Agreement, Contractor's liaison with the SFPUC will be CCA Client Services Manager.

8. Task Orders. Performance of the service under the Agreement will be executed according to a task order process, and Contractor is required to provide adequate quality control processes and deliverables in conformance with the technical requirements of the task order. The SFPUC Contract Manager will initially identify tasks and request Contractor to propose a project scope, sub tasks, staffing plan, Local Business Enterprise (LBE) utilization, schedule, deliverables, budget and costs to complete the task in accordance with Appendix B, Calculation of Charges. All costs associated with the development of the scope of work for each task order shall be borne by Contractor. A final task order will be negotiated between the SFPUC Contract Manager and Contractor and then submitted to the SFPUC Bureau Manager for approval. However, as provided in the Request for Proposals, the budget, if applicable, identified for tasks is an estimate, and the City reserves the right to modify the applicable budget allocated to any task as more specific information concerning the task order scope becomes available.

The task order request will be processed for Controller certification of funding, after which a Notice to Proceed (NTP) will be issued. Contractor is hereby notified that work cannot commence until Contractor receives a written NTP in accordance with the San Francisco Administrative Code. ***Any work performed without an NTP will be at Contractor's own commercial risk.*** The calculations of costs and methods of compensation for all task orders under the Agreement shall be in accordance with Appendix B, Calculation of Charges, and Appendix B-1, Fee Schedule.

9. Reports. Contractor shall submit reports as specified in the Scope of Work, and as further requested by the SFPUC. Format for the content of such reports shall be determined by the SFPUC. The timely submission of all reports is a necessary and material term and condition of the Agreement. Written reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

10. Performance Evaluation. Performance evaluations support the SFPUC's objective of continuously improving the quality of Contractor services. The SFPUC may or may not, at its sole discretion, conduct evaluation(s) of Contractor's performance. Ratings are ultimately the decision of the SFPUC and are not subject to negotiation with Contractor. However, Contractor may provide comments on a performance evaluation form if an evaluation is performed. In the event that the SFPUC conducts performance evaluation(s) of Contractor, such performance evaluation(s) shall not confer any express or implied rights upon Contractor, nor shall they shift any liability to the SFPUC for Contractor's performance of the contract.

Appendix B

Calculation of Charges

As part of Contractor's proposal dated August 15, 2024, Contractor submitted proposed billing rates, attached hereto as Appendix B-1, Fee Schedule, for the requested tasks identified in Appendix A, Scope of Services, which are incorporated herein by this reference.

As provided in Appendix B-1, Fee Schedule, the budget identified for tasks is an estimate, and the City reserves the right to modify the budget allocated, if applicable, to any task as more specific information concerning the task order scope becomes available.

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.

1. Billing Rates. [Reserved]

2. Personnel Changes. [Reserved]

3. Effective Overhead and Profit Rate. [Reserved]

4. Other Direct Costs. Direct reimbursable expenses (or "other direct costs" (ODCs)) shall include actual direct costs (with no markup) of expenses directly incurred in performing the work. All ODCs must receive written pre-approval from the SFPUC Contract Manager.

a. The following items will be eligible for reimbursement as ODCs:

i. Task-specific out-of-town travel as requested by the SFPUC ("out-of-town" shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, and Solano). Out-of-town travel must be non-routine.

a) Rental vehicle or car share: traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented.

b) Personal vehicle use: The SFPUC will pay Contractor on a per mile basis as established by the United States Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. Should the travel begin or end on a normal workday, Contractor must subtract commuting mileage from total mileage to calculate reimbursable mileage. Contractor must submit to the SFPUC an approved mileage log and expense report with its monthly invoices.

c) Project vehicle rental/lease cost, gasoline, tolls and parking. Contractor must request the project vehicle and receive pre-authorization by SFPUC staff. The SFPUC will only reimburse the business portion of the vehicle use. Vehicle mileage log and an expense report are required for consideration of reimbursement. Since auto insurance is already part of the Agreement, the SFPUC will not reimburse any additional insurance costs. Commuting to Moccasin from Contractor's temporary home is not eligible for reimbursement.

ii. ~~Specialty printing ("specialty," as used herein, shall mean large volume~~
[Insert name of Contractor] 1 of _ [Insert date]
P-600 (1-22); Appendix B [Insert PeopleSoft ID]; PRO.0297

printing and color printing and requires prior written approval from SFPUC project staff and documentation of the written approval from the SFPUC must be included with the invoice);

- iii. Task-related permit fees;
- iv. Expedited courier services when requested by SFPUC staff; and
- v. Task-specific safety equipment.

b. Anything not listed above is not eligible for reimbursement. They include, but are not limited to:

i. All other travel expenses such as parking, bridge tolls, public transit, vehicle mileage within the nine Bay Area counties, and travel from Contractor's home office to SFPUC facilities not requested by the SFPUC;

ii. Routine travel from Contractor's home office to SFPUC facilities or to Moccasin;

iii. Contractor staff relocation costs;

iv. Any labor charges or pass-throughs including, but not limited to, administrative and clerical staff time;

v. Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software, communication devices, and electronic equipment;

vi. All meals, including refreshments and working lunches with SFPUC staff;

vii. Equipment to be used by SFPUC staff;

viii. Ergonomic office equipment; and

ix. Postage and courier services that are not requested by SFPUC staff.

5. Subcontractor Make-up and Documentation. Second-tier and pass-through subcontracting is prohibited. Additional subcontractors may be added to Contractor's team after obtaining pre-authorization by the SFPUC Contract Manager, Bureau/Division Manager and the Contract Monitoring Division (CMD), as needed.

6. Subcontractor Fees.

a. Subject to the restrictions in this Section 6;

b. Shall be subject to written pre-approval by Contractor's liaison with the SFPUC;

c. Subcontractor administration markup is limited to five percent (5%) of subcontractors' actual labor costs.

7. Retention. [Reserved]

8. Invoice Requirements. As part of its contracting obligations, Contractor is required to utilize the City’s approved invoicing and time-keeping systems, as specified by the SFPUC project team, for the purposes for which they are intended. Contractor shall not bill the SFPUC to use these systems. Contractor shall not charge SFPUC to send appropriate personnel to user training.

Contractor shall follow the invoicing and supporting documentation instructions as prescribed by the SFPUC.

Invoice Supporting Documentation:

All labor hours must be substantiated by timesheet summaries extracted from Contractor’s accounting system. Each timesheet summary shall include the staff person’s name, company, dates of the days worked, and the number of hours worked each day.

Mileage ODCs must be accompanied by mileage logs providing the beginning and ending mileage to substantiate the variable portal-to-portal distance and local driving required while performing the work. All other ODCs must be substantiated with copies of original receipts including a brief description for each receipt memorializing the purpose.

CMD Form 7 “Progress Payment Form” must be included with each invoice to identify the participation and amount payable to the subcontractors.

CMD Form 9 “Payment Affidavit” must be submitted within 10 days of receiving payment for each invoice to document the subcontractor's payment by the prime contractor.

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.

Appendix B-1 Fee Schedule

In consideration of the services provided by Contractor described in Appendix A and subject to the terms of the Agreement, CleanPowerSF shall pay Contractor the following fees (“Fees”):

1. Service Fees

a. Data Management Service Fees

- i. CleanPowerSF shall pay Contractor \$0.8433 per month for each active customer meter that is enrolled and served by CleanPowerSF each month. For purposes of clarification, each customer account may have multiple customer meter(s).

b. Customer Communications System Fee

- i. CleanPowerSF shall pay Contractor \$0.0400 per month for each active customer meter that is enrolled and served by CleanPowerSF each month for use of Contractor’s customer communications technology platform.

- c. Beginning in [Effective Month] 2026, Contractor’s payment in effect for Services listed in this Agreement will escalate annually beginning [Effective Month] 1, 2026 by the Consumer Price Index West Region using [Effective Month] 2025 as the baseline.

2. Additional Services

a. Email Marketing

- i. Contractor may provide or may cause to be provided certain email marketing services to CleanPowerSF for mass-marketing and communications to customers. Services are subject to further written agreement.

b. Consumer Behavior Science Consulting Services

- i. Contractor may provide or may cause to be provided certain consumer behavior research and consulting services to CleanPowerSF. Services are subject to further written agreement.
- ii. Contractor will provide up to 50 hours of the service described above per year to CleanPowerSF at no cost. CleanPowerSF may request additional hours, and the cost of additional hours will be passed through to CleanPowerSF at cost.

c. Forecasting Services

- i. Contractor may provide or may cause to be provided certain forecasting services for short-term, long-term, and/or renewable generation. Services are

subject to further written agreement.

d. Customer Analytics and Program Management Services

1. Contractor may provide or may cause to be provided certain demand flexibility, customer targeting and/or, measurement and verification tools and services in support of CleanPowerSF's program and policy objectives. Services are subject to further written agreement.

3. Script Translation Services Fees

- a. Charges incurred by Contractor from engaging with vendors to translate scripts or other documents from English into other language(s) will be passed by Contractor to CleanPowerSF at cost.

4. Additional Data Storage Fee

- a. CleanPowerSF may elect to expand the included active data retention term of twenty-four months for customer data contained in the data warehouse to 60 months at a cost of \$0.015 per meter increase to the per meter per month service fee listed above.

5. Additional Deliverable Pricing Fees

- a. The Fees defined in Section 1 include only the services and items expressly set forth in this Agreement. Unless otherwise agreed to by the Parties in an amendment to the Agreement, the cost of any additional deliverables provided by Contractor to CleanPowerSF shall be passed through directly to CleanPowerSF without mark-up. A labor rate of \$200.00 per hour will be utilized for labor costs unless otherwise agreed upon in writing by both parties prior to the commencement of additional work.
 - i. Beginning in [Effective Month] 2026, Contractor's labor rate above will escalate annually by the Consumer Price Index West Region, using January 2025 as the baseline. However, the maximum labor rate is capped at \$220 per hour, unless the SFPUC Contract Manager and Contract Administration Bureau Manager authorizes an increase to the rate in writing.

6. List of Subcontractors

- a. See Change Institute
- b. LanguageLine Solutions, LLC.



San Francisco
Water Power Sewer
Services of the San Francisco Public Utilities Commission

Contract Administration Bureau
525 Golden Gate, 8th Floor
San Francisco, CA 94102
T 415.551.4603
F 415.554.3225

November 24, 2015

Legal Department
Noble Americas Energy Solutions, LLC
401 West A. Street, Suite 500
San Diego, CA 92101
Email: nescontracts@noblesolutions.com

RE: 1) Notice of Contract Award - Customer and Administrative Services for Community Choice Aggregation Program (CS-247[R])
2) Transmittal - Executed Agreement between the City and County of San Francisco Public Utilities Commission and Noble Americas Energy Solutions, LLC

Dear Legal Department :

This letter provides a *notification of contract award* for the following contracted work:

BLANKET PURCHASE ORDER NO: **BPUC16000051**
- *Work may not be charged against this blanket purchase order number*

SCOPE: Provide comprehensive customer care, account management, billing, and data services for CleanPowerSf , a community choice aggregation program. Exchange of customer usage, billing payment data with PG&E, timely response to CleanPowerSF customer service calls and issues.

EFFECTIVE DATE: **November 20, 2015 to October 31, 2018**

CONTRACT TO DATE: Total value of contract not to exceed
\$5,600,000.00

Invoices must be charged against specific task orders only after a *Notice to Proceed* has been issued.

Should you have any questions, please do not hesitate to contact Rosiana Angel at (415) 554-1549.

Edwin M. Lee
Mayor

Francesca Vietor
President

Anson Moran
Vice President

Ann Moller Caen
Commissioner

Vince Courtney
Commissioner

Ike Kwon
Commissioner

Harlan L. Kelly, Jr.
General Manager



Enclosure: Executed Agreement

cc: Michael Hyams

File/NCA-CS-247[R]

**City and County of San Francisco
San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, California 94102**

Agreement between the City and County of San Francisco and

Noble Americas Energy Solutions LLC

**CS-247[R] Customer and Administrative Services for
Community Choice Aggregation Program**

This Agreement is made this 28th day of October, 2015, in the City and County of San Francisco, State of California, by and between: Noble Americas Energy Solutions LLC, 401 West A Street, Suite 500, San Diego California, 92101, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through the San Francisco Public Utilities Commission.

Recitals

WHEREAS, the San Francisco Public Utilities Commission ("SFPUC") wishes to retain the services of a qualified supplier of meter data management, billing and customer care services for CleanPowerSF, the City's Community Choice Aggregation ("CCA") Program; and,

WHEREAS, a Request for Proposal ("RFP") was issued on May 29, 2015, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4141-11/12 on July 6, 2015;

Now, THEREFORE, the parties agree as follows:

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

of risk of possible non-appropriation is part of the consideration for this Agreement. Contractor shall have no obligation to perform Services for which payment has not been appropriated.

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

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from **November 1, 2015 to October 31, 2018**. After October 31, 2018 the City will have the option ("the first option") to extend the contract for three years at the City's sole and absolute discretion. If the first option is exercised, the parties may agree to an additional three year contract extension ("the second option"). However, unless Contractor notifies City at least eighteen months prior to the expiration of contract that it does not wish to exercise the second option, the second option will then be exercised or declined at the City's sole and absolute discretion. In no event shall the agreement with its original period and first and second option periods exceed nine total years. In exercising its options, the City will endeavor to notify Noble in writing of the City's decision to exercise or decline the option within eighteen months of the end of the agreement period, with the City's option expiring should the City fail to exercise the option prior to six months before the end of the agreement period. In no event shall the deadlines provided for in this section supersede other rights or remedies given in other sections of this Agreement.

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

4. Services Contractor Agrees to Perform. The Contractor agrees to perform the services provided for in Appendix A, "Services to be provided by Contractor," attached hereto and incorporated by reference as though fully set forth herein. Contractor shall commence performance on the date, (the "Commencement Date"), designated in a "Notice to Proceed", issued by the City, and acknowledged by Contractor, which date shall be after the Effective Date. A "Notice to Proceed" is a written instruction to Contractor, consistent with Appendix A, to commence its performance under this Agreement, which complies with the notice provisions of this Agreement, and which is acknowledged by Contractor.

5. Compensation. Compensation shall be made in monthly payments on or before the thirtieth day of each month for work, as set forth in Section 4 of this Agreement, that the General Manager of the San Francisco Public Utilities Commission, in his or her reasonable discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **\$5,600,000 (Five Million Six Hundred Thousand Dollars)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the San Francisco Public Utilities Commission as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments. Contractor shall have no obligation to perform Services in excess of the amount designated hereinabove, as such amount may be amended from time to time by mutual agreement between the Parties.

Contractor has no obligation to perform Services in excess of the Guaranteed Maximum Cost (as hereinbelow defined in Article 6, and as such may be adjusted from time to time), and, in the event the Guaranteed Maximum Cost is reached, and not increased, Contractor may, at its option, on thirty days prior written notice, cease providing Services and terminate the Contract pursuant to Article 64.

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

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

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

8. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Reserved. (Disallowance)

10. Taxes.

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

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

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

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

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

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

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

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

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

14. Independent Contractor; Payment of Taxes and Other Expenses.

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, in a manner consistent with Article 28, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City reasonably determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

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

total expenses under this section of the Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance.

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

1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

4) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

(a) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form;

(b) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(c) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

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

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

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

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

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

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

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

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

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

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

16. Indemnification

a. Contractor shall, to the extent of its own negligence and/or willful misconduct only, 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, to the extent such arises directly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade

secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied by Contractor in the performance of this Agreement.

b. If Contractor suffers loss, cost, damage, injury, liability, and claims of any kind or type attributable to another contractor of City ("Third Party"), then City shall indemnify and save harmless Contractor and its officers, agents and employees from and against any and all loss, cost, damage, injury, liability, and claims thereof, **PROVIDED, HOWEVER**, that such indemnity as described herein shall be only to the extent that City actually recovers from such other contractor for such loss, cost, damage, injury, liability, and/or claims suffered by Contractor. Should the amount recovered from Third Party amount to less than the total aggregate amount claimed by City and Contractor, the recovery shall be divided proportionally by damages suffered.

17. Incidental Damages. Contractor shall be responsible for incidental damages resulting in whole or in part from Contractor's acts or omissions. For the avoidance of doubt, Contractor shall not be liable for consequential damages. More specifically:

a. if Contractor is unable to meet its obligations under this contract, Contractor shall pay CleanPowerSF/City an amount equal to its incidental damages, including: City's cost of funds incurred during any delay due to a Contractor billing error, which agreed to be the simple interest accruing at the prime interest rate as established by the Wall Street Journal on any amounts not accurately and timely billed during the "Delinquent Period." The Delinquent Period shall commence on the latest date that the amount(s) in question could have been paid to CleanPowerSF/City without being delinquent, and the amount been accurately and timely billed. The Delinquent Period shall end when all billing errors are corrected for the amounts in question and accurate information is delivered to the customer by PG&E; provided that such corrections are performed within a reasonable amount of time. In no case shall the Delinquent Period extend beyond the next ordinary bill date after Contractor provides accurate information to PG&E; and

b. In the case of Default on the part of the Contractor, the Contractor shall be responsible for the City's incremental cost of obtaining replacement services under similar terms and conditions which shall be calculated as the positive difference, if any, by subtracting the Fees that would be due to Contractor for the remaining term of the Agreement from costs of replacement Services from a new service provided.

18. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 (COMPENSATION) OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT, EXCEPT AS OTHERWISE SPECIFICALLY AGREED TO HEREIN. THIS PROVISION SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

19. Reserved. (Liquidated Damages)

20. Default; Remedies.

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

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

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

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

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

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

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

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and

regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

d. For any Event of Default listed herein, or for any provision of this Contract requiring cure by the Contractor, including by way of illustration and not limitation anything designated as a "material breach", not related to customer billing or the settlement of meter data, such cure period shall be sixty (60) business days, **PROVIDED, HOWEVER**, that for such events which require more than sixty (60) business days, to cure, then Contractor shall have such additional time as may reasonably be required to effect such cure **PROVIDED FURTHER**, that Contractor diligently and continuously pursues such cure. With regards to customer billing or the settlement of meter data: For any Event of Default listed herein, or for any provision of this Contract requiring cure by the Contractor, including by way of illustration and not limitation anything designated as a "material breach" related to customer billing or the settlement of meter data, such cure period shall be thirty (30) business days or the end of the next billing cycle, whichever comes first.

21. Termination for Convenience.

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

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

- 1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- 2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- 3) Terminating all existing orders and subcontracts.
- 4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- 5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- 6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- 7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

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

1) All outstanding fees owed by City for Services performed by Contractor, whether billed or unbilled, for which City has not already tendered payment.

2) A reasonable allowance for profit on the cost of the terminating the Services and other work described herein above.

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

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

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

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice, and (2) any claim which City may have against Contractor in connection with this Agreement.

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

22. Rights and Duties upon Termination or Expiration.

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

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

18. Liability of City

56. Severability

57. Protection of private information

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

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

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

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

To City: Director, CleanPowerSF
SFPUC – Power Enterprise
525 Golden Gate, 7th Floor
San Francisco, CA 94102

To Contractor: Noble Americas Energy Solutions LLC
Attn: Legal Department
401 West A Street
Suite 500
San Diego, CA 92101
nescontracts@noblesolutions.com
619-684-8350 (fax)

With a copy to: Noble Americas Energy Solutions LLC
Attn: Drake Welch

401 West A Street
Suite 500
San Diego, CA 92101
dwelch@noblesolutions.com

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

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

27. Intellectual Property. If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, all right, title, and interest, including, without limitation, any patent, trademark, and/ or copyright in such works of authorship shall be vested exclusively in Contractor, **PROVIDED, HOWEVER,** that City shall have a perpetual, non-exclusive license to such works as may be needed to provide customer care services for CleanPowerSF (e.g. call center telephone scripts and similar) if and when the City takes over this function.

28. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. City and Contractor agree that, insofar as Contractor maintains an active trading floor, any such audit, examination, review, etc., will be conducted off of Contractor's premises. City and Contractor agree to work to minimize the impact of any such audit on Contractor's operations. At the City's own expense, Contractor will, upon request, provide City with copies to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. Subcontracting. Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. The City hereby agrees to the following arrangements, irrespective of whether or not they constitute subcontracting hereunder: **Contractor may retain the services of The Thier Group for some of its call center support functions utilizing San Francisco based personnel, and**

AnswerNet (for the ramp up period and for overflow calls). The City's approval to a Contractor subcontract for all or part of this Agreement, in or pursuant to this Section, shall not release Contractor in whole or in part from any of its obligations or duties under this Agreement if an authorized subcontractor fails to perform or observe any such obligation or duty, unless the City otherwise expressly agrees in writing at the time it approves the subcontract. Contractor waives any right to require the City to proceed against any person or entity including any authorized subcontractor.

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

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

32. Consideration of Criminal History in Hiring and Employment Decisions.

a. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

b. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is

undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

33. Local Business Enterprise Utilization; Liquidated Damages.

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

b. **Compliance and Enforcement**

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 Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of CMD") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

2) **Subcontracting Goals.** The LBE subcontracting participation goal for this contract is 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 CMD Progress Payment Form and the CMD Payment Affidavit. Failure to provide the CMD Progress Payment Form and the CMD Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the CMD Payment Form and the CMD 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 CMD 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 CMD 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 CMD in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount. Contractor further agrees, within ten working days following receipt of payment from the City, to file the CMD Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

34. Nondiscrimination; Penalties.

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

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

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

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contracts Monitoring Division (formerly 'Human Rights Commission').

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein.

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

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

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

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

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

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

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

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

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

43. Requiring Minimum Compensation for Covered Employees.

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

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

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

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

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

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

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

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

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to

exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees.

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

- a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.
- b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.
- c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.
- d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.
- e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

- f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.
- g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.
- h. Contractor shall keep itself informed of the current requirements of the HCAO.
- i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.
- k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
- m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program.

a. Incorporation of Administrative Code Provisions by Reference.

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

b. First Source Hiring Agreement.

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

- 1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate

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

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

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

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

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

6) Set the term of the requirements.

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

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

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

c. **Hiring Decisions.**

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

d. **Exceptions.**

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

e. **Liquidated Damages.**

Contractor agrees:

- 1) To be liable to the City for liquidated damages as provided in this section;
- 2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- 3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- 4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;
- 5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

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

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

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

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

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts.

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

46. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement as if it were a Termination for Breach under Article 64, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic. Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not

limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

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

49. Administrative Remedy for Agreement Interpretation.

a. **Negotiation; Alternative Dispute Resolution.** The parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement by negotiation, as more fully described herein below. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City, and City will continue to make payment of undisputed amounts to Contractor as usual for such obligations. If agreed by both parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither party will be entitled to legal fees or costs for matters resolved under this section.

b. **Government Code Claims.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the Government Code Claim requirements set forth in Administrative Code Chapter 10 and Government Code Section 900, et seq.

50. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

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

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

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

54. Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for

services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

55. Reserved. (Supervision of Minors)

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

57. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor. Furthermore, Contractor shall comply with California Public Utilities Commission and State of California laws regarding protection of customer data. This section shall not inhibit Contractor's ability to perform the contractual duties or perform regulatory responsibilities required by law.

58. Reserved.

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

60. Reserved. (Slavery Era Disclosure)

61. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no

presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

62. Force Majeure. Except for the payment of moneys due and owing, if either party is hindered, delayed or rendered unable, wholly or in part, to perform its obligations under this Agreement due to Force Majeure, the obligations of such party (the "Affected party"), to the extent affected by the Force Majeure, will be suspended for the duration of such Force Majeure. The Affected party shall promptly notify the other party by telephone and confirm within a reasonable period of time by a written notice describing in reasonable detail the nature and estimated duration of such Force Majeure. The Affected party shall exercise reasonable efforts to remedy the Force Majeure with all reasonable dispatch. If the duration of the Force Majeure event exceeds twenty (20) days, the party not claiming Force Majeure may terminate the affected portions of any Services upon written notice to the Affected party. Neither party shall be liable for damages arising from an event of Force Majeure.

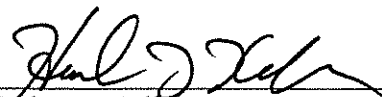
63. Reserved. (PCI Requirements)

64. Termination for Breach. When invoked in good faith pursuant to applicable provisions of the Agreement, a Termination for Breach shall mean that the City shall designate a date no later than nine months from the date of such invocation, or, in the absence of such designation, then nine months from such date, (the "TFB Date") by which date Contractor shall cease its performance hereunder. In such event, on the TFB Date, Contractor shall provide to the City all City data and documentation and other information reasonably requested by the City, and, except as Contractor is otherwise required to retain such data under this Contract or by law, Contractor shall destroy all copies of City data not turned over to the City. After termination, the parties shall have no further obligations towards each other, except for the timely payment of moneys due and owing from City to Contractor for Contractor's performance up to and including the TFB Date, subject to the provisions of Articles 1, 4, 6, 7, 8 and 49, and except that City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor in the event of Termination for Breach; Contractor shall pay to City on demand all costs and expenses reasonably incurred by City in effecting such cure, and City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Termination for Breach; **provided, however**, that such costs damages, losses, costs or expenses shall be capped at the amount of the Compensation paid to the Contractor over the twelve (12) months preceding the date of invocation described in the first sentence of this Article.

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


CITY

Recommended by:



Harlan L. Kelly, Jr.
General Manager
San Francisco Public Utilities Commission

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 
Justin R. Guibert
Deputy City Attorney

Approved:

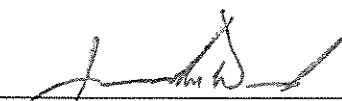

Jaci Fong
Director of the Office of Contract
Administration, and
Purchaser

CONTRACTOR

**NOBLE AMERICAS ENERGY
SOLUTIONS LLC**

By signing this Agreement, I certify that I
comply with the requirements of the
Minimum Compensation Ordinance, which
entitle Covered Employees to certain
minimum hourly wages and compensated and
uncompensated time off.

I have read and understood paragraph 35, the
City's statement urging companies doing
business in Northern Ireland to move towards
resolving employment inequities,
encouraging compliance with the MacBride
Principles, and urging San Francisco
companies to do business with corporations
that abide by the MacBride Principles.


James M. Wood
President

City vendor number: 86077

Appendices

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

Appendix A

Services to be provided by Contractor

Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's and its proposal dated **June 2015**. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and its implementing task orders shall control over the RFP and the Contractor's proposal.

1. Description of Services

The primary role of the Contractor will be to provide comprehensive customer care, account management, billing, and data services for CleanPowerSF, the City and County of San Francisco's Community Choice Aggregation Program, including: (1) management of CleanPowerSF customer accounts and billing; (2) exchange of customer usage, billing and payment data with PG&E; (3) timely response to CleanPowerSF customer service calls; and (4) handling of CleanPowerSF customer service issues. CleanPowerSF is operated through the City.

These following tasks provide general guidance to the Contractor as to the anticipated scope of work which the SFPUC reserves the right to modify or delete:

Task 1. Customer Enrollment

- 1.1 Administer pre-enrollment activities required to track customer enrollment and establish procedures for exchanging and processing of Community Choice Aggregation Service Requests via PG&E's electronic data interchange (EDI) protocol at program start-up and during steady-state operations.
- 1.2 Coordinate with CleanPowerSF to administer the issuance of the statutorily required opt-out notices.
- 1.3 Process requested changes to a customer's choice of services, community choice aggregation service requests (CCASR), including but not limited to enrollment in CleanPowerSF's default and voluntary rate schedule options, Net Energy Metering (NEM), On Bill Repayment (OBR) service, balanced payment plan, and customer initiated returns to bundled utility service or customer initiated returns to direct access service.
- 1.4 Process CCASRs with PG&E when customer status changes.
- 1.5 Maintain an accurate customer database of all customers who are offered CleanPowerSF's CCA service and identify each customer's enrollment status, tariff election(s), payment history, collection status, on-site generating capacity, if applicable, and any correspondence with customer as well as other information that may become necessary to effectively administer CleanPowerSF's CCA program.

Information in this database will be based on the information provided by PG&E and/or the customer.

- 1.6 Maintain and provide, as needed, a record of customers who have been offered service with CleanPowerSF but have elected to opt out, either before or after starting service with CleanPowerSF.

Task 2. Data and Billing Administration

- 2.1 Obtain all customer usage data from PG&E's meter data management agent (MDMA) server to allow for timely billing (according to PG&E's requirements).
- 2.2 Maintain and timely communicate the amount to be billed by PG&E for services provided by CleanPowerSF, according to PG&E's applicable billing window.
- 2.3 Receive and maintain all data related to payment transactions toward CleanPowerSF's charges from PG&E after payment is received by PG&E customers.
- 2.4 Complete the technical testing of all necessary electronic interfaces with PG&E, which provide for the communication by Internet and EDI between the Contractor and PG&E to confirm system compatibility related to CCASRs, billing collections, meter reading, and electricity usage data.
- 2.5 Demonstrate successful completion of all standard PG&E technical testing prior to the customer enrollment period, and shall have the capability and signed agreements necessary to communicate or exchange the information using EDI, Internet, or an electronic format acceptable to PG&E.
- 2.6 Following implementation of CCA service, certain ad hoc functional enhancements and/or modifications to the customer information system may be requested by CleanPowerSF. Such enhancements and/or modifications shall be completed by the Contractor to the extent that such enhancements and/or modifications will not compromise essential functions of the customer information system. In the event that the anticipated time required for the Contractor to complete CleanPowerSF's requested enhancements and/or modifications exceeds 120 hours per quarter, the Contractor shall notify CleanPowerSF prior to proceeding.
- 2.7 Allow and provide a means for CleanPowerSF to have functional access to the online database and add customer interactions and other account notes.
- 2.8 Allow and provide a means for CleanPowerSF to view customer email or written letter correspondence within online database.
- 2.9 Maintain and provide as-needed historical usage data (as provided by PG&E) on all customers going back from the start of CCA service.

- 2.10 Maintain viewing access, available to appropriate CleanPowerSF staff, to billing records/details of CleanPowerSF customers. The Contractor shall use commercially reasonable efforts to include functionality that supports the intuitive parsing and labeling of files provided by PG&E.
- 2.11 Maintain accessible archives of billing records for all CleanPowerSF customers from the start of CCA service or period of no less than five years.
- 2.12 Maintain and communicate as needed records of net-energy metering credits and production statistics for participating CleanPowerSF customers to support on-bill data posting and periodic account settlement/true-up consistent with applicable provisions of CleanPowerSF's net-energy metering program.
- 2.13 When requested by CleanPowerSF, place on-bill repayment charges on the relevant customer accounts.
- 2.14 When requested by CleanPowerSF, place identified charges on the customer account.
- 2.15 Identify customers participating in program offerings of CleanPowerSF.
- 2.16 Perform quarterly reviews of CleanPowerSF program offerings, including information on customer uptake and financial impacts and status.
- 2.17 Maintain all data according to CleanPowerSF's customer privacy policy and the requirements of the California Public Utilities Commission decisions including D.12-08-045, including a daily backup process.
- 2.18 Maintain an agreed upon security breach policy.
- 2.19 Maintain a table of rate schedules provided by CleanPowerSF, including voluntary renewable energy tariffs.
- 2.20 Review CleanPowerSF rates to PG&E accounts to ensure that the proper rates are being applied to the accounts.
- 2.21 Use commercially reasonable efforts to remedy billing errors for any customer in a timely manner, no more than two billing cycles.
- 2.22 Assist with the annual settlement process for net-energy metering customers by identifying eligible customers, providing accrued charges and credits, and providing mailing list to CleanPowerSF's designated partners.
- 2.23 Provide customer mailing list to CleanPowerSF designated printer for new move-in customer notices and opt out confirmation letters routinely within 7 days
- 2.24 Provide a customer mailing list to CleanPowerSF and/or its designated printer for customers that are over 90 days overdue. If no payment is received from the

customer within 60 days of notice being sent, issue a CCASR to return the customer to PG&E and levy the applicable fees.

- 2.25 Participate in coordinating discussions with CleanPower SF and PG&E, as necessary, to encourage the effective administration of CleanPowerSF's net-energy metering program, or other programs, with regard to bill presentment, credit tracking and account settlement. Assist in troubleshooting and resolving, through process and/or system modifications, any issues that may result in CCA customer confusion and/or misinformation relates to CleanPowerSF's net-energy metering program.
- 2.26 The Contractor shall provide CleanPowerSF, or Clean PowerSF's Scheduling Coordinator (SC) with Settlement Quality Meter Data (SQMD) as required from the California Independent System Operator (CAISO). Upon CleanPowerSF's request, the Contractor shall submit the SQMD directly to the CAISO on behalf of CleanPowerSF.
- 2.27 CleanPowerSF agrees that the Contractor shall have no responsibility for any charges or penalties asserted by the CAISO associated with the SQMD under an indemnity or otherwise, unless the charges or penalties are resulting from late submission of the SQMD to CleanPowerSF, CleanPowerSF's SC or the CAISO directly. If such late submission charges or penalties are incurred, CleanPowerSF may deduct a sum representing the charges from any money due to Contractor.
- 2.28 Contractor agrees to coordinate SQMD submissions with CleanPowerSF and to submit early Operational Meter Analysis and Reporting (OMAR) data to CleanPowerSF at least three business days in advance of required submission to CAISO for review and shadow settlement calculations.
- 2.29 The contractor shall prepare the SQMD in accordance with prudent utility practice, however the Contractor hereby disclaims in advance that any representation is made or intended that the SQMD is necessarily complete or free from error. Contractor agrees to share SQMD preparation and calculation methodology with CleanPowerSF in advance of service commencement.
- 2.30 Serve as a Qualified Reporting Entity (QRE) for: 1) certain locally situated, small-scale renewable generators supplying electric energy to CleanPowerSF through a feed-in tariff; and/or 2) certain locally situated, small-scale renewable generators that may be owned and/or controlled by CleanPowerSF, supplying electric energy to CleanPowerSF through such arrangements, should this service be deemed necessary by CleanPowerSF. QRE services will be provided by Contractor consistent with terms and conditions agreed to by both Parties via QRE service agreement or agreements ("QRE Service Agreement"). Parties shall in good faith negotiate and execute QRE Service Agreement(s), as needed.
- 2.31 Submit a monthly generation extract file to the Western Renewable Energy Generation Information System (WREGIS) on CleanPowerSF's behalf, which will

conform to the characteristics and data requirements set forth in the WREGIS interface control document for QREs.

- 2.32 For the purpose of collecting applicable generation and usage data for CleanPowerSFs renewable energy projects and consistent with PG&E's applicable meter servicing arrangement, serve as designated "subcontractor" for certain renewable energy projects: the Contractor shall receive applicable electric meter data from PG&E and shall provide such data to CleanPowerSF for purposes of performance tracking and invoice creation.
- 2.33 Assist CleanPowerSF in completing requisite generation registration materials, as such materials may be required by WREGIS, the California Energy Commission, the California Public Utilities Commission and/or other entities to effect the successful crediting of renewable energy certificates, as appropriate, to CleanPowerSF's WREGIS account. These services shall be limited to assistance with the process and shall not involve providing regulatory or legal advice.
- 2.34 Reporting:
- 2.34.1 Ensure monthly status reports are provided during the first week of each month.
- 2.34.2 Ensure weekly status reports are provided during all enrollment periods.
- 2.34.3 The Contractor shall provide the following reports, frequency and delivery methods:

Report	Frequency	Delivery Method
Aging	Weekly, monthly	SFTP
Call Center Statistics	Weekly, monthly	Email
Cash Receipts	Weekly, monthly	SFTP
Days to Invoice	Weekly, monthly	SFTP
Voluntary RE tariff enrollment	Weekly, monthly	SFTP
Invoice Summary Report	Weekly, monthly	SFTP
Invoice Summary Report, Mid-month	Monthly	SFTP
Monthly Transaction Summary	Monthly	Email
Opt out with Rate Class	Weekly, monthly	SFTP
Retroactive Returns	Monthly	Email
Sent to Collections	Monthly	Email
Snapshot	Weekly	SFTP

Report	Frequency	Delivery Method
Snapshot with addresses	Weekly	SFTP
Unbilled Usage	Monthly	SFTP
Full Volume Usage by Rate Class	Monthly	SFTP
Customer complaints, feedback and performance against customer care standards;	Quarterly	SFTP
Call center contact quality	Quarterly, monthly	SFTP

2.34.1 Contractor and CleanPowerSF shall mutually determine the format for each report.

Task 3. Customer Services

- 3.1 Staff a call center during any statutory enrollment period 24 hours a day, 7 days a week.
- 3.2 Staff a call center during non-enrollment periods between the hours of 7AM and 7 PM Pacific Time zone Monday through Friday, excluding any PG&E and/or City holidays.
- 3.3 Ensure that a sufficient number of data manager experts are available to seamlessly manage escalated calls between the hours of 8AM and 5PM Pacific Time zone Monday through Friday, excluding any PG&E and/or City holidays.
- 3.4 Receive calls from CleanPowerSF customers referred to the Contractor by PG&E or the City's customer service personnel and receive calls from CleanPowerSF customers choosing to contact the Contractor without referral from PG&E.
- 3.5 Record all inbound calls and make available to CleanPowerSF staff upon request. Maintain an archive of such recorded calls for a minimum period of 24 months.
- 3.6 During inbound calls, attempt to collect and/or confirm current email, mailing address and phone number of CleanPowerSF customers (and update the customer database accordingly).
- 3.7 Respond to telephone inquiries from CleanPowerSF customers using a script developed and updated quarterly by CleanPowerSF in cooperation with the Contractor. For questions not addressed within the script, the Contractor shall refer inquires back to PG&E or CleanPowerSF, as appropriate.
- 3.8 Respond to customer inquiries along the following guidelines for customer calls:
 - 3.8.1 A minimum of 80% of all calls will be answered within 20 seconds.

- 3.8.2 100% of voicemail messages will be answered within one (1) business day.
- 3.8.3 Provide translation services for messaging and inbound calls. Translation services must be available for Spanish Tagalog, Russian, Chinese (Mandarin and Cantonese), Korean, and Vietnamese.
- 3.9 Respond to customer inquiries along the following guidelines for customer emails:
 - 3.9.1 100% of emails receive an immediate automated acknowledgement.
 - 3.9.2 95% of emails receive a customized response within one (1) business day of receipt.
 - 3.9.3 100% of emails receive a customized response within three (3) business days of receipt.
- 3.10 Respond to customer inquiries along the following guidelines for customer letters and faxes:
 - 3.10.1 95% of written correspondence is responded to within five (5) business days of receipt.
 - 3.10.2 100% of written correspondence is responded to within ten (10) business days of receipt.
- 3.11 Respond to customer inquiries along the following guidelines for customer complaints:
 - 3.11.1 Customer complaints on matters under the control of CleanPowerSF: Supplier will relay the complaint to CleanPowerSF staff within one (1) business day. CleanPowerSF staff will decide on a course of action to resolve the complaint and communicate it to the customer within three (3) working days. Supplier will communicate the complaint resolution to the customer within 10 working days.
 - 3.11.2 Customer complaints on matters under the control of PG&E: Supplier will refer the customer to PG&E.
- 3.12 Provide a contact telephone number to PG&E for placement on the invoice to allow CleanPowerSF customers to contact the Contractor directly.
- 3.13 Offer a bi-annual cross training to PG&E call center management/supervisory staff. It is anticipated the location for such training will be within California, generally located at the offices of CleanPowerSF or PG&E.
- 3.14 Participate in coordinative meetings, at CleanPowerSF's request, to promote the resolution of any customer service issues. Such meetings may include

CleanPowerSF's management/staff, the Contractor's management/staff, and/or PG&E's management/staff, as necessary, and may require on-site participation by the Contractor's management/staff.

- 3.15 Provide CleanPowerSF with access to records of customer communications for spot-check and audit purposes.
- 3.16 Maintain records of customer complaints broken down by customer class, number of complaints, type of complaint and method of resolution.
- 3.17 Maintain records of performance against defined customer care standards.
- 3.18 Maintain records of customer feedback.
- 3.19 Track and report call center contact quality, via automated post-call surveys, on a weekly and monthly basis.
- 3.20 Evaluate and report on customer satisfaction through periodic customer surveys conducted after calls and at least every six months.
- 3.21 If Contractor is currently providing customer care services to other entities, it shall ensure sufficient staffing to respond to CleanPowerSF calls regardless of other commitments.
- 3.22 Provide access to a configurable Interactive Voice Response ("IVR")

Task 4. Community Benefits Commitments

Following issuance of the Notice-to-Proceed (NTP) for the first task to be performed by Contractor under this Agreement, Contractor commits to providing the Community Benefits Commitments detailed below during the 3 year term of the Agreement. Contractor's commitments shall be funded independently by Contractor and shall not be tied to or dependent upon SFPUC funds or sources of funding, receivables from SFPUC, or retention associated with this Project. In the event that the contract value is not fully expended or is otherwise amended, the parties hereby agree to meet and discuss the impact to the corresponding Community Benefit Commitments. The representations, warranties and other terms contained in this Community Benefit Commitments section have been designed by Contractor as the basis for a Community Benefit Plan, but are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other persons or entities.

As stated in the Request for Proposals

"Although this Task 4 is a deliverable task, it is a zero-dollar task. Zero hours should be allotted in your Overhead and Profit Schedule (OPS) for this task. No hours or dollars should be allotted or included in Proposer's costs for this Project in order to perform or deliver your voluntarily proposed Community Benefits commitments. If the Proposer commits any funds to delivering the Community Benefits commitments it proposes, all

such funds must be independent of SFPUC funding or any dollars associated with this Project. If the Proposer commits to contributing any funds to performing or delivering its commitments related to this task, such funds may not be dependent in any way upon receipt of SFPUC funding, including not being dependent upon release of retention, etc.”

Community Benefits Plan and Timeline

Contractor shall work with the SFPUC Assistant General Manager for External Affairs or designee to develop a Community Benefits Plan and Timeline within three months of issuance of NTP. The Community Benefits Plan and Timeline will provide details regarding expenditures, a schedule, and timelines related to the Community Benefits Commitments described below. Contractor shall develop the Community Benefits Plan and Timeline so that all of the deliverables, including the dollars and hours associated with the Community Benefits Commitments described below, are aligned with and driven by SFPUC’s priorities and broader Agency-wide community benefits strategy. Contractor’s team will develop the Community Benefits Plan and Timeline with the necessary flexibility relating to timing, expenditure of funds, partners, strategic delivery, scale, and performance of Community Benefits Commitments so that they are all aligned with, directed by, and driven by the SFPUC Assistant General Manager for External Affairs’ community benefits strategy for the SFPUC and in order to best leverage our collective resources and positive community impacts. Once the initial Community Benefits Plan and Timeline are developed, SFPUC and Contractor shall meet at least once a year during the term of the Agreement to discuss the work plan and associated timelines, and make any adjustments or updates as necessary.

Community Benefits Commitments

Contractor shall develop a work plan, schedule, and timeline as one component of the Community Benefits Plan and Timeline that will be aligned with and driven by SFPUC’s priorities to deliver, perform and produce the following Community Benefits Commitments:

Table 1 - Community Benefits Summary Table

Community Benefit Category	Community Partner	Expected Outcomes	Timetable & Duration	Direct Financial Contribution	Total Contributions
Environmental Justice/Environment Programs, Education	Center for Climate Protection	ECO2school program, which lowers GHG emissions through youth education.	3 years	\$ 60,000.00	\$ 60,000.00
TOTAL				\$ 60,000.00	\$ 60,000.00

Contractor shall provide \$60,000 in direct financial contributions. Contractor commits to a minimum contribution of **\$60,000** over the life of this contract.

Contractor's community benefits work will be executed as a major task for the Project. As stated above, Contractor shall coordinate and develop the timing, schedule, partners, and size/scale of the delivery, performance and dollar expenditures related to all of Contractor's Community Benefits Commitments throughout the term of the Agreement with the necessary flexibility so that they are all aligned with and driven by the SFPUC in order to leverage and maximize our collective resources and positive community impacts.

Community Benefits Work Approach, Project Team/Organization, and Accountability

Contractor's Vice President Customer Care shall serve as the Executive in Charge to manage the Contractor's community benefits commitments and provide fiduciary oversight. Contractor's Vice President Customer Care shall ensure that the community benefits commitments herein are delivered to the communities that they are intended to benefit in a transparent and accountable manner. Contractor's Vice President Customer Care shall coordinate the senior management of Contractor's subconsultants to ensure the entire team participates in providing benefits to the San Francisco community. Contractor's Vice President Customer Care shall work with the Contractor's Community Benefits Coordinator (the "Noble Project Manager," as identified in Appendix A, 5. Department and Contractor Liaisons) to organize, plan, track, measure, and report on Contractor's community benefits commitments.

Contractor's Community Benefits Coordinator shall submit a stand-alone annual report on progress in fulfilling Contractor's community benefits commitments, detailing factors such as the total number of dollars and hours contributed to each of the proposed tasks and organizations over the year. Contractor shall also provide independently verifiable documentation (such as certified payroll records, receipts, etc.) that the SFPUC can use to independently and easily verify that the dollars and volunteer hours contributed by Contractor as part of its Community Benefits Commitments were delivered to and actually reached the communities they were intended to benefit.

Contractor's Community Benefits Coordinator shall ensure that quarterly reports are prepared and submitted to SFPUC on the last business day of the month following the close of each quarter. The reports shall describe Contractor's community benefits efforts under the program both in the prior quarter and contract to date. Contractor's quarterly reports shall include the name and description of all projects commenced, underway, and completed; the dollar and hour values of all activities and elements of each project; the progress to date of each project; and the outcomes of projects that are underway. Contractor shall submit such documentation to substantiate that the Community Benefits Commitments and any funds associated thereto were in fact delivered to the communities they were intended to benefit within the three months immediately following delivery of such Community Benefits Commitments or dollars associated thereto.

Contractor's Community Benefits Commitments shall be performed prospectively during the term of the Agreement, after the award of the Agreement and following issuance of NTP on the first task assigned to Contractor under this Agreement. Commitments performed as part of previous contracts or prior to Contractor being awarded the

Agreement cannot be used as part of Contractor's Community Benefits Commitments for this Project.

Contractor's Community Benefits Commitments Task 4 Proposal is incorporated herein. Contractor shall provide all of the Commitments, consistent with all of the terms of Contractor's attached Proposal (including Contractor's Work Approach, Project Team and Organization, and Accountability), which are not explicitly detailed in this Task 4. Where and if there are any conflicts or discrepancies between the language above in Task 4 of this Agreement and the attached Proposal, the terms of the language of Task 4 above shall prevail as Contractor and SFPUC's final mutual understanding and agreement.

2. Task Orders

Performance of the service under this Agreement will be executed according to a task order process, and Contractor is required to provide adequate quality control processes and deliverables in conformance with the technical requirements of the task order. The San Francisco Public Utilities Commission (SFPUC) Project Manager will initially identify tasks and request the Contractor to propose a project scope, sub tasks, staffing plan, **LBE utilization**, schedule, deliverables, budget and costs to complete the task in accordance with Appendix B. All costs associated with the development of the scope of work shall be borne by Contractor. A final task order will be negotiated between the SFPUC Project Manager and the Contractor and then submitted to the Bureau Manager for approval. However, as provided in the RFP, the budget, if applicable, identified for tasks is an estimate, and the City reserves the right to modify the applicable budget allocated to any task as more specific information concerning the task order scope becomes available.

The task order request will be processed for Controller certification of funding, after which a *Notice to Proceed* will be issued. The Contractor is hereby notified that work cannot commence until the Contractor receives a written Notice to Proceed in accordance with the San Francisco Administrative Code. *Any work performed without a Notice to Proceed will be at the Contractor's own commercial risk.* The calculations of costs and methods of compensation for all task orders under this Agreement shall be in accordance with Appendix B.

3. Performance Evaluation

Performance evaluations support the SFPUC's objective of continuously improving the quality of Contractor services. The SFPUC may or may not, at its sole discretion, conduct evaluation/s of Contractor's performance. Ratings are ultimately the decision of the SFPUC and are not subject to negotiation with the Contractor. However, the Contractor may provide comments on a performance evaluation form if an evaluation is performed. In the event that the SFPUC conducts performance evaluation(s) of the Contractor, such performance evaluation(s) shall not confer any express or implied rights upon Contractor, nor shall they shift any liability to the SFPUC for the Contractor's performance of the contract.

4. Reports

Contractor shall submit written reports as requested by the SFPUC. Format for the content of such reports shall be determined by the SFPUC. The timely submission of all reports is a

necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

5. Department and Contractor Liaisons

In performing the services provided for in this Agreement, Contractor's liaison with the SFPUC will be **Michael Hyams** (the "SFPUC Project Manager"). SFPUC's liaison with Contractor will be **Paul Soco** (the "Noble Project Manager").

6. Transition of Responsibilities

- a) Transition-Out Plan. With a minimum of six months notice by City to Contractor, Contractor shall prepare and deliver to the City, as set forth in this Agreement, a Disentanglement Plan, or Transition-Out Plan, for transitioning the provision of Services, or portion thereof, under this Contract to the City's alternate service provider in the event of: (i) the expiration or termination of the Term; or (ii) the City's election during the Term pursuant to obtain any portion, component, subset or all of the Services offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, or to provide the same to itself.

- Customer Services – Transition-Out Plan for Customer Care Services shall include:
 - i. Detailed training material for Customer Care activities as well as back office activities
 - ii. IVR scripting
 - iii. Access to Contractor CIS/Billing system through BUI will be provided
 - iv. Detailed training program that includes both face-to-face and interactive web-based training (for set-up and ongoing as needed)
 - v. Training including CCA program information as well as full system training which will include system navigation, order processing, task creation and completion, and account inquiry, creation and review
 - vi. An experienced call center employee to sit amongst City of SF employees and take calls for a period after cutover date
 - vii. Option to allow for complex data or energy market questions to be forwarded to Contractor personnel post transition as may be required to (this line will evolve as City of SF gains more experience with the calls, the data available, etc.)
 - viii. **It is noted that the LBE requirement in 33.b.2 is fulfilled through Customer Services.** Should the City take over these services, this requirement is no longer applicable.
- Data Manager Services – Transition-Out Plan for Data Manager Services shall include:
 - i. Delivery of City Data. Contractor shall provide to the City all City data and documentation, in a format or formats acceptable by CleanPowerSF, and other information reasonably requested by the City in connection with the transition that is sufficient to enable the City, or another reasonably

competent service provider, to fully assume the provision of any terminated Services. Except as Contractor is otherwise required to retain such data under this Contract or by law, Contractor shall destroy all copies of City data not turned over to the City.

- ii. The processes, systems, and people related to Data Manager Services within this agreement are unique to Contractor and therefore will not be included in the Transition-out Plan for Data Manager Services.
 - iii. Contractor shall implement the Transition-Out Plan and perform all tasks in a timely manner, so that disruption or discontinuity in service from Contractor to the City or City's designee for the Transition-Out is minimized to the extent practicable. Contractor shall participate in meetings with the City and the City's alternate service provider as reasonably required by the City in planning for a transition and implementing the Transition-Out Plan.
- b) Disentanglement Services. Subject to the performance by the City and any subsequent provider of services similar to the Services of all actions reasonably expected of each party in connection with the transition, Contractor shall cooperate fully with the City and third parties and shall take all actions reasonably requested by the City or necessary to accomplish, by no later than eighteen (18) months after: (i) the effective date of expiration or termination of the Term or (ii) the City's election during the Term to obtain any portion, component, subset or all of the Services offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, or to provide the same to itself, a smooth, complete transition of responsibility for the Services being terminated from Contractor to the City, or to any replacement provider designated by the City (a "Disentanglement"), with, to the extent practical, no or minimal material interruption of or adverse impact on the City. In the event the City elects to terminate any Service (but not all Services in the aggregate) pursuant to the terms hereof, Contractor shall perform its Disentanglement obligations hereunder to the extent applicable to the Service or Services being terminated. Contractor's obligations hereunder regarding the collection and payment to the City of administrative fees shall continue throughout Disentanglement.
- c) Charges. All Disentanglement Services performed by Contractor during the transition shall be performed by Contractor at no additional cost to the City. Unique services requested by the City will be priced as agreed upon by the parties using the hourly rate identified in Appendix B-1 (The City may take the Customer Care Services in-house at any time given the appropriate notice under the agreement).

Appendix B Calculation of Charges

As part of Contractor's proposal dated **June 2015**, Contractor submitted proposed billing rates, attached hereto as Appendix B-1, Pricing Schedule, for the requested tasks required per the Description of Services to be provided by Contractor, Appendix A, incorporated herein by reference.

As provided in the Pricing Schedule, the budget identified for tasks is an estimate, and the City reserves the right to modify the budget allocated, if applicable, to any task as more specific information concerning the task order scope becomes available.

1. Billing Rates

Contractor's unit fees and hourly direct labor billing rates as stated in Appendix B-1 will be the billing rates for the specified cost components. Direct labor billing rates may not exceed the lowest rate charged to any other governmental entity except the City and County of San Francisco. Direct labor billing rates will be fixed for the first two years of the contract, and may be adjusted annually thereafter. The first adjustment may be made no earlier than the second anniversary of the effective start date as indicated in the original Notice of Contract Award letter. The amount of the adjustment is limited to a maximum of the CPI annual percentage change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year. No increase, including the annual CPI adjustment, is allowed to billing rates exceeding **\$220 per hour**, unless SFPUC Project Manager and SFPUC Bureau Manager authorize an increase to the rate in writing.

2. Personnel Changes

Key team members identified in Contractor's proposal will be the Lead Project Personnel assigned to the project. Any proposed changes to Contractor's Lead Project Personnel, including key personnel identified for the Community Benefits task, must be approved in writing by the SFPUC Project Manager. The SFPUC Project Manager must also approve the assignment of any staff assigned to provide services that will be billed at the hourly labor rate noted in Appendix B-1, prior to commencing any work on a task order. All personnel must meet all qualification requirements established by the Agreement.

3. Subcontractor make-up and documentation

Second-tier and pass-through subcontracting is prohibited. Additional subcontractors may be added to the contractor team after obtaining pre-authorization by the SFPUC Project Manager, Bureau/Division Manager and the Contract Monitoring Division.

4. Invoice Requirements

The SFPUC is automating its contracting and invoice payment processes with online software systems (SOLIS). The following processes are being automated: Contract Certification, Insurance Compliance, Task Order Certification, Timekeeping, Invoice Approval, and Invoice Payment. As part of its contracting obligations, the Contractor is required to 1) become an authorized user of these systems, 2) attend user training for these systems; and 3) utilize these

systems for the purposes for which they are intended. Contractor shall not bill the SFPUC to use these systems. Contractor shall not charge SFPUC to send appropriate personnel to user training.

Contractor shall follow the invoicing and supporting documentation instructions as detailed in the SOLIS training or otherwise prescribed by the SFPUC.

Invoice Supporting Documentation:

All labor hours must be substantiated by timesheet summaries extracted from the Contractor's accounting system. Each timesheet summary shall include the staff person's name, company, dates of the days worked, and the number of hours worked each day.

Mileage ODCs must be accompanied by mileage logs providing the beginning and ending mileage to substantiate the variable portal-to-portal distance and local driving required while performing the work. All other ODCs must be substantiated with copies of original receipts including a brief description for each receipt memorializing the purpose.

CMD Form 7 "Progress Payment Form" must be included with each invoice to identify the participation and amount payable to the subcontractors.

CMD Form 9 "Payment Affidavit" must be submitted within ten (10) days of receiving payment for each invoice to document the subcontractor's payment by the prime contractor.

Appendix B-1 Pricing Schedule

Customer Services Fee:

- \$0.20 per active meter per month

Customer Enrollment, Billing and Data and Administration Fee:

- \$1.35 per active meter per month for meters 0-100,000
- \$1.10 per active meter per month for meters 100,001-200,000
- \$1.05 per active meter per month for meters 200,001-300,000
- \$0.95 per active meter per month for meters in excess of 300,000

The Fees defined in Appendix B-1 include only the services and items expressly set forth in Appendix A. Unless otherwise agreed to by the Parties in an Addendum, the cost of any additional deliverable provided by Contractor to CleanPowerSF shall be passed through directly to CleanPowerSF without mark-up using a labor rate of \$150.00 per hour.



November 13, 2019

Josh Brock, Director of CCA Client Services
Calpine Energy Solutions, LLC
401 West A Street, Suite 500
San Diego, CA 92101
Email: Josh.Brock@Calpinesolutions.com

RE: 1) Notice of Contract Amendment Certification
2) Executed Amendment #2 between the City and County of San Francisco Public Utilities Commission and Calpine Energy Solutions, LLC.

Dear Mr. Brock,

This letter provides a *Notice of Contract Amendment Certification* for the following contracted work:

Contract ID Number: CS-247(R) (1000007708)
1000000229 - \$170,084.60 (old)
1000007708 - \$18,599,140.40 (new)

Contract Title: Customer and Administrative Services for Community Choice Aggregation Program

Effective Date: November 20, 2015 to October 31, 2021

Amount: Total value of contract not to exceed \$18,769,225.00

Work may not be charged against the Contract ID Number. Invoices must be charged against specific task orders only after a *Notice to Proceed* has been issued.

Sincerely,

Rosiana Angel
Infrastructure Budget and Payment Processing

Enclosure: Executed Agreement
cc: Michael Hyams

File/ CS-247(R) Amendment #2 - NCAC

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.

London N. Breed
Mayor

Ann Moller Caen
President

Francesca Vietor
Vice President

Anson Moran
Commissioner

Sophie Maxwell
Commissioner

Tim Paulson
Commissioner

Harlan L. Kelly, Jr.
General Manager



**City and County of San Francisco
San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, California 94102**

**Second Amendment to the Agreement Between the City and County of San
Francisco and Calpine Energy Solutions, LLC
CS-247[R] Customer and Administrative Services
for Community Choice Aggregation Program**

THIS AMENDMENT (this "Amendment") is made as of August 1, 2019, in San Francisco, California, by and between Calpine Energy Solutions, LLC ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through the San Francisco Public Utilities Commission.

Recitals

WHEREAS, City and Contractor have entered into the Agreement (as defined below);

WHEREAS, City seeks to receive services from Contractor through ClickDimensions, LLC (as defined below) as an add-on to the customer relationship management platform that Contractor provides to City at no additional cost;

WHEREAS, AlphaBOLD (as defined below) is Contractor's information technology partner;

WHEREAS, AlphaBOLD is a vendor of ClickDimensions' services;

WHEREAS, Contractor licenses ClickDimensions' services through AlphaBOLD;

WHEREAS, ClickDimensions' services include email marketing, campaign automation, web intelligence, surveys, web forms and landing pages, and social marketing;

WHEREAS, City will be able to access ClickDimensions' services through Contractor's agreement with AlphaBOLD, at no additional cost to City, by amending the Agreement and executing certain Marketing Automation Terms of Service;

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein; and

NOW, THEREFORE, Contractor and the City agree as follows:

Article 1 Definitions

The following definitions shall apply to this Amendment:

1.1 Agreement. The term “Agreement” shall mean the Agreement dated October 28, 2015 between Contractor and City, as amended through the Certification of Name Change, dated January 24, 2017, and through the First Amendment to the Agreement dated August 23, 2018.

1.2 AlphaBOLD. “AlphaBOLD” shall mean AlphaBOLD Inc.

1.3 ClickDimensions. “ClickDimensions” shall mean ClickDimensions, LLC.

1.4 Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

Article 2 Modifications to the Agreement

The Agreement is hereby modified as follows:

2.1 Section 65. Section 65 is added to the Agreement to read as follows:

65. ClickDimensions’ Services.

a. Contractor grants to City use of ClickDimensions’ services during the term of this Agreement, at no additional cost to City, in connection with the customer relationship management services Contractor is providing to City as set forth in Appendix A.

b. The Marketing Automation Terms of Service applicable to City’s use of ClickDimensions’ services are attached hereto as Appendix C and incorporated into this Agreement by this reference.

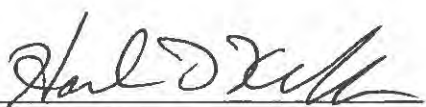



Article 3 Effective Date

The modification set forth in Article 2 shall be effective on and after August 1, 2019.

Article 4 Legal Effect

Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY Recommended by:  Harlan L. Kelly, Jr. General Manager San Francisco Public Utilities Commission Approved as to Form: Dennis J. Herrera City Attorney By:  William K. Sanders Deputy City Attorney Approved:  Alaric Degrafinried Director of the Office of Contract Administration and Purchaser	CONTRACTOR Calpine Energy Solutions, LLC  James M. Wood President City vendor number: 0000027863
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Appendix C: Marketing Automation Terms of Service

APPENDIX C

Marketing Automation Terms of Service

THESE TERMS OF SERVICE (THESE “**TERMS**”) GOVERN THE MARKETING AUTOMATION SERVICE PROVIDED BY CONTRACTOR TO CITY THROUGH CLICKDIMENSIONS. Capitalized terms used in these Terms have the meanings assigned in Section 13 hereof unless otherwise defined in these Terms or in the Agreement.

1. Access to the Services. Subject to City’s compliance with these Terms and ClickDimensions’ Acceptable Use Policy attached hereto as Appendix 1 and incorporated herein by this reference, Contractor grants City a nonexclusive, nontransferable limited sublicense to use the Services for its internal business purposes during the applicable term of service and subject to any other restrictions or limitations identified in these Terms or the applicable Order Form.

1.1. The software used to provide the Services (the “**Software**”) is located on Microsoft Windows Azure servers which are located in Microsoft data centers. The Services are provided via the Microsoft Windows Azure cloud platform. Windows Azure runs in data centers managed and operated by Microsoft Global Foundation Services (GFS). These data centers comply with key industry standards, such as ISO/IEC 27001:2005, for security and reliability. The data centers are managed, monitored, and administered by Microsoft operations staff that have years of experience in delivering the world’s largest online services with 24 x 7 continuity. For detailed information about Windows Azure security please visit Microsoft’s Azure security page at <http://www.windowsazure.com/en-us/support/trust-center/security/>

1.2. These Terms are not intended to, nor do they, provide any license rights to the Software except as provided herein. The original and all copies of the Software and Services remain the sole property of ClickDimensions or its licensors, subject to all of the confidentiality and other restrictions set forth in these Terms. City must retain all legends relating to copyright, trademarks, patents, or confidentiality on all copies of the Documentation or any print of a screen display from the Services. ClickDimensions reserves all right, title and interest in and to the Software and Services under all applicable federal, state and local laws of the United States and any other jurisdiction. Neither Contractor nor ClickDimensions is obligated to provide, and City acquires no right of any kind with respect to, any source code for the Software.

1.3. The Services may interoperate with various third party platforms such as Twitter, Facebook, LinkedIn, Instagram, and other social networking sites as determined by ClickDimensions from time to time (“**Third-Party Platforms**”). Continued interoperation of the Services with any Third-Party Platform is dependent upon the availability of each such platform, and ClickDimensions may cease to provide such functionality if access to any Third-Party Platform is not available to ClickDimensions on commercially reasonable terms.

2. Term. These Terms are effective for the term of the Agreement, unless the Services are earlier terminated by either party as provided herein.

3. Conditions of Use. City’s right to use the Services is subject to the following restrictions and limitations.

3.1. The Services must not be used for the sending of unsolicited commercial email (as such term is defined in the CAN-SPAM Act of 2003 and any rules adopted under such act (the “**Act**”) or any other Applicable Law);

3.2. The Services will only be used for lawful purposes and in accordance with Applicable Law;

3.3. The Services will not be used for hosting content, including images and documents, that knowingly infringe on the intellectual property rights of third parties, or that include any obscene or libelous material or other material that violates any Applicable Law;

3.4. City will not access or otherwise use third party mailing lists or otherwise prepare or distribute mass unsolicited commercial email as such term is defined in the Act or other Applicable Law in connection with City's use of the Services;

3.5. City will import, access or otherwise use only lists for which all listed parties have consented to receive correspondence from City in connection with City's use of the Services; City hereby covenants that City will not use any other lists in connection with City's use of the Services;

3.6. City acknowledges that not all email messages sent through use of the Services will be received by their intended recipients;

3.7. Every email message sent by City in connection with the Services must contain the "unsubscribe" link that allows the recipient to remove themselves from City's mailing list;

3.8. City will comply with the restrictions on content of email messages and activities using the Services as set forth or referenced in these Terms;

3.9. City is the sole or designated "sender" (as such term is defined in the Act) of any email message sent by City using the Services;

3.10. The "from" line of any email message sent by City using the Services will accurately and in a non-deceptive manner identify the City and its products or services;

3.11. The "subject" line of any email message sent by City using the Services will not contain any deceptive or misleading content regarding the overall subject matter of the email message;

3.12. City will include in any email message sent by City using the Services a valid physical address for City, which may be a valid post office box meeting the registration requirements established by the United States Postal Service;

3.13. In any email message sent by City using the Services, City will not include any incentives (e.g., coupons, discounts, awards) that encourage a recipient to forward the email message to another recipient; and

3.14. In City's use of the Services, City agrees to represent City accurately and will not impersonate any other person, whether actual or fictitious.

3.15. City's use of Third-Party Platforms is at City's own risk and is governed by the terms and conditions of such Third-Party Platforms (and City shall comply with all such terms and conditions). Neither Contractor nor ClickDimensions nor any of their respective agents makes any representations or has any liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such Third-Party Platform or any transactions completed and any contract entered into by City with any such third party.

3.16. City will not:

3.16.1. Resell, sublicense, time-share, or otherwise share the Services with any third party unless otherwise approved by Contractor or ClickDimensions;

3.16.2. Make the Services available to anyone who is not an “Authorized User.” An Authorized User is an employee of City, or a person to whom City has outsourced service, who is authorized to access the Software;

3.16.3. Modify or create derivative works of or decompile, disassemble or reverse-engineer the Software or otherwise attempt to derive the source code of the Software;

3.16.4. Copy any feature, design or graphic in the Software or the Services; or

3.16.5. Access or use the Services for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

4. City Data.

4.1. City must provide all data for use in the Services (the “**City Data**”), and neither Contractor nor ClickDimensions is obligated to modify or add to the City Data. As between City, Contractor, and ClickDimensions, City is solely responsible for the content, legality, quality and accuracy of the City Data, and for determining the suitability of the Services for City’s business. City represents and warrants complying with Applicable Laws regarding City Data. City will not upload any of the following types of information for use in the Services: (a) personal health information, (b) driver’s license numbers, (c) passport numbers, (d) social security, tax ID or similar numbers, or (e) bank, checking, credit card, debit card, or other financial account numbers.

4.2. City owns all right, title and interest in and to the City Data. City is solely responsible and liable for the City Data and will control access to and the management of the City Data through City’s account and Authorized Users.

4.3. Contractor, ClickDimensions, and their respective agents must keep the City Data confidential in accordance with Section 11 of these Terms.

4.4. Contractor, ClickDimensions, and their respective agents may use the City Data only as necessary to carry out their obligations under these Terms, and for no other purpose; provided, however, that Contractor, ClickDimensions, and their respective agents may access and use City Data (i) as necessary to identify or resolve technical problems or respond to complaints about the Services; (ii) to improve the Services, and (iii) to identify trends and publish reports on its findings, provided the reports include data aggregated from more than one customer site and do not identify City.

4.5. ClickDimensions will use industry-standard technical and organizational measures in compliance with Applicable Laws to keep City Data secure and to protect against accidental loss or unlawful destruction, alteration, disclosure or access.

4.6. In the event of a security breach that may affect City, if and to the extent required by Applicable Laws: (i) Contractor, ClickDimensions, or their respective agents will notify City of the breach and provide a description of the event, and (ii) if Contractor, ClickDimensions, or their respective agents reasonably determine, and notify City, that it is necessary for all or part of such information to be forwarded on to individuals on one or more of City’s email lists, City will promptly forward such information to the individuals on such list or lists, all in accordance with Applicable Laws.

4.7. By agreeing to these Terms, each of City and Contractor agrees to comply with, and be bound by, the terms of the ClickDimensions Data Processing Addendum attached hereto as Appendix 2 and incorporated by this reference, to the extent applicable to the Services delivered pursuant to these Terms.

5. Consulting Services.

5.1. ClickDimensions will provide its consulting and professional services to City in connection with the Services only to the extent City enters into a separate agreement with ClickDimensions and City.

6. Warranties.

6.1. Contractor warrants that (i) the Services will function substantially in accordance with the Documentation; (ii) Contractor has the right to provide the Services to City under these Terms; and (iii) the Services will be provided in compliance with Applicable Law. If the warranty set forth in subsection 6.1(i) is breached during the Term, Contractor will cause ClickDimensions to modify the Services to conform to the Documentation.

6.2. Neither Contractor nor ClickDimensions has any obligation under Section 6.1(i) if (i) the Software has been modified by City or any third party, unless the modification has been pre-approved in writing by Contractor or ClickDimensions; or (ii) the non-conformance is caused by any third-party software or hardware, by accidental damage or by other matters beyond the reasonable control of Contractor, ClickDimensions, or their respective agents.

6.3. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, THE SERVICES ARE PROVIDED WITH NO OTHER WARRANTIES OF ANY KIND, AND CONTRACTOR AND CLICKDIMENSIONS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR AND CLICKDIMENSIONS DO NOT WARRANT THAT THE USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. NEITHER CONTRACTOR NOR CLICKDIMENSIONS IS RESPONSIBLE OR LIABLE IN ANY MANNER FOR ANY THIRD-PARTY PLATFORMS ASSOCIATED WITH OR UTILIZED IN CONNECTION WITH THE SERVICES, INCLUDING THE FAILURE OF ANY SUCH THIRD-PARTY PLATFORMS.

7. [Reserved]

8. Indemnification

8.1. By Contractor. Contractor will indemnify, defend and hold harmless City and its employees (collectively, the “**City Indemnitees**”) from any fines, penalties or damages finally awarded against any or all of the City Indemnitees (including reasonable costs and legal fees incurred by any of the City Indemnitees) arising out of any third party suit, claim or other legal action (a “**Claim**”) alleging that (i) the Services have not been provided in accordance with Applicable Law; or (ii) the use of the Services by City in accordance with these Terms infringes any copyright, trade secret or patent. Notwithstanding the foregoing, City acknowledges and agrees that, as a sub-licensor of the Services (which are ultimately licensed and provided by ClickDimensions), Contractor will provide indemnification for Claims under Section 8.1(i) or (ii) only to the extent that Contractor is indemnified by ClickDimensions for such Claims.

8.1.1. If there is a Claim under Section 8.1(ii), or Contractor or ClickDimensions believes that such a Claim is likely, Contractor will, at its option, either (i) obtain, or cause ClickDimensions to obtain, a license from such third party for the benefit of City; or (ii) cause ClickDimensions to modify the Services so that they no longer infringe; or (iii) if neither of the foregoing options is commercially feasible, terminate the relevant Order Form under these Terms, in which case ClickDimensions shall refund all prepaid subscription fees, if any, under the relevant Order Form for unused Services.

8.1.2. Contractor shall have no indemnification obligations under Section 8.1(ii) or otherwise for any Claim arising out of: (i) City’s combination of the Services with software or service not supplied or approved by

Contractor or ClickDimensions, to the extent the alleged infringement is caused by such combination; (ii) any repair, adjustment, modification or alteration to the Services by City or any third party, unless approved by Contractor or ClickDimensions; or (iii) any refusal by City to install and use a non-infringing version of the Services offered by Contractor or ClickDimensions.

This Section states the entire liability of Contractor with respect to any Claim of intellectual property infringement arising out of use of the Services.

8.2. By City. City will indemnify, defend and hold harmless Contractor, ClickDimensions, and their respective agents, affiliates, directors and employees (collectively, the “**Contractor Indemnitees**”) from any fines, penalties or damages finally awarded against any or all of the Contractor Indemnitees (including reasonable costs and legal fees incurred by any of the Contractor Indemnitees) arising out of any Claim for (i) infringement of any copyright, trade secret or patent, or (ii) failure to comply with Applicable Law, to the extent that any such Claim arises out of or resulted from City’s use of the Services (and not the Services themselves).

8.4. Indemnification Process. If a Claim that may give rise to indemnification is commenced, the party being indemnified under these Terms (the “**Indemnified Party**”) will provide written notice of the Claim to the party providing indemnification under these Terms (the “**Indemnifying Party**”) within five (5) days of receipt of the Claim (a “**Claim Notice**”). The Indemnifying Party, at its sole expense, will promptly take control of the defense. The Indemnified Party shall have the right to participate in any proceedings in such manner as it may deem appropriate at its own cost and expense. The Indemnified Party will cooperate with the Indemnifying Party in the defense of the Claim. In no event will the Indemnifying Party enter into a settlement arrangement which requires any payment or other consideration from the Indemnified Party, or contains a stipulation to or an admission or acknowledgement of any wrongdoing (whether in tort or otherwise) on the part of the Indemnified Party, without the Indemnified Party’s prior written consent, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party will be relieved of its indemnification obligation under this Section 8 if the Indemnified Party materially fails to comply with this Section and such material failure prejudices the Indemnifying Party’s defense of the Claim.

9. Termination and Suspension.

9.1. Either party to the Agreement may terminate the Services if the other party materially breaches these Terms and the breach is not cured within 30 days after written notice is provided to the breaching party.

9.2. Contractor reserves the right to suspend access to the Services, at its sole discretion, if Contractor or ClickDimensions determines in its reasonable discretion that City is misusing (e.g., SPAM) the Services in a way that adversely affects the reputation and deliverability of the overall solution provided by Contractor through ClickDimensions. Contractor will use commercially reasonable efforts to notify City prior to any such suspension unless Contractor reasonably determines: (a) it is prohibited from doing so under Applicable Law or under legal process (such as court or government administrative agency processes, orders, mandates, and the like); or (b) it is necessary to delay notice in order to prevent imminent harm to the Services or a third party. Under circumstances where notice is delayed, Contractor will provide notice if and when the related restrictions in the previous sentence no longer apply.

9.3. Upon any expiration or termination of these Terms, the rights and licenses granted hereunder will automatically terminate, and City will cease all further use of the Services. Contractor will have no liability for any costs, losses, damages, or liabilities arising out of or related to termination of these Terms. Upon expiration or termination of these Terms, Contractor, ClickDimensions, and their respective agents will destroy any City Data in their possession or under their control within 90 days (or earlier upon request) of the effective date of termination or expiration, and neither Contractor nor ClickDimensions will have any further obligation to maintain or provide access to any City Data. If and to the extent permitted by Applicable Laws,

Contractor, ClickDimensions, and their respective agents may retain a copy of the City Data for the sole purpose of serving as evidence in the context of the establishment, exercise or defense of legal claim(s) or of complying with legal obligations under Applicable Law, which will be deleted or anonymized upon expiration of the applicable legal retention period. The provisions of Sections 4 (City Data), 8 (Indemnification), this Section 9.3 (Effect of Termination), 10 (Limitation of Liability), and 11 (Confidentiality) will survive termination of these Terms.

10. Limitation of Liability.

10.1. SUBJECT TO SECTION 10.3 BELOW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER THESE TERMS FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST OR CORRUPTED DATA, LOST PROFITS, LOST BUSINESS OR LOST OPPORTUNITY), OR ANY OTHER SIMILAR DAMAGES UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY), EVEN IF THE OTHER PARTY HAS BEEN INFORMED OF THIS POSSIBILITY. CITY ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE SERVICES, SOFTWARE AND DOCUMENTATION NECESSARY TO ACHIEVE CITY'S INTENDED RESULTS, AND FOR THE USE AND RESULTS OF THE SERVICES.

10.2. SUBJECT TO SECTION 10.3 BELOW, EACH PARTY'S TOTAL LIABILITY FOR ANY DIRECT LOSS, COST, CLAIM OR DAMAGES OF ANY KIND RELATED TO THE SERVICES SHALL NOT EXCEED THE AMOUNT OF THE FEES ULTIMATELY PAID OR PAYABLE TO CLICKDIMENSIONS FOR THE SERVICES DURING THE 12 MONTHS BEFORE THE EVENT GIVING RISE TO SUCH LOSS, COST, CLAIM OR DAMAGES. THIS LIMITATION ON LIABILITY IS A CONTROLLING FACTOR IN THE SETTING OF THE FEES ULTIMATELY PAYABLE TO CLICKDIMENSIONS.

10.3. THE LIMITATIONS ON LIABILITY SET FORTH IN SECTIONS 10.1 AND 10.2 DO NOT APPLY TO LIABILITY ARISING FROM: (I) FRAUD OR WILLFUL MISCONDUCT; OR (II) A PARTY'S DUTY TO INDEMNIFY THE OTHER FOR THIRD-PARTY CLAIMS UNDER SECTION 8 OF THESE TERMS; OR (III) A BREACH OF A PARTY'S CONFIDENTIALITY, AND COMPLIANCE WITH LAW OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, EACH PARTY'S LIABILITY FOR CLAIMS ARISING OUT OF A BREACH DESCRIBED IN THIS SECTION 10.3 SHALL NOT EXCEED THE GREATER OF TEN TIMES THE FEES ULTIMATELY PAID TO CLICKDIMENSIONS DURING THE 12-MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE OR ONE MILLION DOLLARS.

11. Confidentiality.

11.1. Each recipient (the "Recipient") of Confidential Information from the other party (the "Disclosing Party") agrees that it will not disclose, provide, or otherwise make publicly available such Confidential Information during the term of the Agreement, and for a period of 5 years thereafter, and in the case of Confidential Information that the Disclosing Party identifies as a trade secret under applicable law, for as long as such Confidential Information remains a trade secret. Each Recipient agrees that it will obtain a written confidentiality agreement from each third party (consultant or any other person) not governed by these Terms who is duly provided access to the Confidential Information of the Disclosing Party. In addition, each Recipient agrees that it will not: (i) use the Disclosing Party's Confidential Information for any purpose beyond the scope of these Terms; (ii) copy any part of the Confidential Information or disclose any part of the Confidential Information to any third party other than Recipient's employees or consultants who need the information to perform their duties; (iii) authorize or permit any such employee or consultant to use or disclose any part of the Confidential Information in violation of these Terms; or (iv) produce any product or offer any service of any nature whatsoever based in whole or in part on the Confidential Information or cause or assist any third party in doing so.

11.2. The Recipient's obligations under these Terms will not apply to any portion of the Confidential Information that: (1) at the time of disclosure to Recipient, was in the public domain or subsequently becomes a part of the public domain through no breach of these Terms by the Recipient; (2) Recipient had in its possession at the time of disclosure by the Disclosing Party, as established by written documentation in existence at that time, and that was not acquired directly or indirectly from the Disclosing Party or with knowledge of confidentiality restrictions; (3) Recipient subsequently acquires by lawful means from a third-party who is under no obligation of confidentiality or non-use owed to Disclosing Party; (4) Recipient subsequently independently develops without any use of or reference to the Confidential Information; or (5) City is required to disclose pursuant to the California Public Records Act or the San Francisco Sunshine Ordinance.

11.3. If Recipient is legally compelled to disclose any portion of the Confidential Information in connection with a lawsuit or similar proceeding or to any governmental agency, or in connection with a request under the California Public Records Act or the San Francisco Sunshine Ordinance, Recipient will give Disclosing Party prompt notice of that fact, including in its notice the legal basis for the required disclosure and the nature of the Confidential Information that must be disclosed. Recipient will cooperate fully with Disclosing Party in obtaining a protective order or other appropriate protection relating to the disclosure and subsequent use of the Confidential Information. Recipient will disclose only that portion of the Confidential Information that is legally required to be disclosed.

12. Miscellaneous.

12.1. These Terms represent the entire agreement of the parties with respect to the subject matter hereof and supersede any prior or current understandings, whether written or oral. If there is a conflict between these Terms and any other part of the Agreement, these Terms will prevail. No document, purchase order, or any handwritten or typewritten text which purports to alter or amend these Terms will alter or amend any provision of these Terms, unless the parties both specify in writing that such terms or conditions control.

12.2. Any waiver, modification or amendment of any provision of these Terms will be effective only if in writing and signed by duly authorized representatives of both parties.

12.3. The parties consent to the exercise of exclusive jurisdiction by the state or federal courts in the State of California for any claim relating to these Terms.

12.4. City will not assign or otherwise transfer any of its rights or obligations under these Terms without the prior written consent of Contractor and ClickDimensions. Any assignment in breach of this Section is void.

12.5. City and Contractor will: (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption; (b) implement and maintain policies and procedures, including adequate procedures under applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, to ensure compliance with such laws and enforce them where appropriate; and (c) promptly report to the other any request or demand for any undue financial or other advantage of any kind received in connection with the performance of these Terms.

12.6. City may not export or re-export, directly or indirectly, any Services, Documentation or confidential information to any countries outside the United States except as permitted under the U.S. Commerce Department's Export Administration Regulations.

13. Glossary.

13.1. "Agreement" means the Agreement between the City and County of San Francisco and Calpine Energy Solutions, LLC, CS-247[R] Customer and Administrative Services for Community Choice Aggregation Program dated October 28, 2015, as amended.

13.2. "Applicable Law" means all applicable laws, orders, regulations and other acts of all governmental authorities, foreign or domestic, having jurisdiction over these Terms or the activities of such party hereunder.

13.3. "Confidential Information" means (i) City Data or (ii) all information or material which (1) gives the Disclosing Party a competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of the Disclosing Party; and (2) is marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking.

13.4. "City Data" means any electronic information stored in the Software database, including Personal Data.

13.5. "Documentation" means user documentation provided electronically by ClickDimensions for use with the Services, as periodically updated and located at <https://support.clickdimensions.com/hc/en-us/categories/115000187534-ClickDimensions-Knowledge-Base>.

13.6. "Personal Data" means any information relating to (i) an identified or identifiable natural person and, (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable data protection laws and regulations).

13.7. "Services" or "Service" means the hosted City experience solutions provided by Contractor through ClickDimensions under these Terms and any modifications periodically made thereto by ClickDimensions.



San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

January 18, 2022

Infrastructure Division
525 Golden Gate Avenue, 8th Floor
San Francisco, CA 94102

Josh Brock, Director of CCA Client Services
Calpine Energy Solutions, LLC
401 West A Street, Suite 500
San Diego, CA 92101
Email: Josh.Brock@Calpinesolutions.com

RE: 1) Notice of Contract Amendment Certification
2) Executed Amendment #3 between the City and County of San Francisco
Public Utilities Commission and Calpine Energy Solutions, LLC.

Dear Mr. Brock,

This letter provides a ***Notice of Contract Amendment Certification*** for the following contracted work:

Contract ID Number: CS-247(R) (1000007708)
1000000229 - \$170,084.60 (old)
1000007708 - \$32,475,340.40 (new)

Contract Title: Customer and Administrative Services for Community
Choice Aggregation Program

Effective Date: November 20, 2015 to October 31, 2024

Amount: Total value of contract not to exceed \$32,645,425.00

Work may not be charged against the Contract ID Number. Invoices must be charged against specific task orders only after a *Notice to Proceed* has been issued.

Sincerely,

Rosiana Angel
Infrastructure Budget and Payment Processing

Enclosure: Executed Agreement
cc: Michael Hyams
File/ CS-247(R) Amendment #3 - NCAC

London N. Breed
Mayor

Anson Moran
President

Newsha Ajami
Vice President

Sophie Maxwell
Commissioner

Tim Paulson
Commissioner

Ed Harrington
Commissioner

Dennis J. Herrera
General Manager

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.



**City and County of San Francisco
525 Golden Gate Avenue
San Francisco, California 94102**

**Third Amendment to the Agreement Between the City and County of San
Francisco and Calpine Energy Solutions, LLC
CS-247[R] Customer and Administrative Services
for Community Choice Aggregation Program**

THIS AMENDMENT (this “Amendment”) is made as of September 1, 2021, in San Francisco, California, by and between **Calpine Energy Solutions, LLC** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period, increase the contract amount, and update standard contractual clauses; and

WHEREAS, the Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through RFP and issued on May 29, 2015, and this modification is consistent therewith; and

WHEREAS, approval for this Amendment was obtained from the Department of Human Resources, PSC#4141-11/12 on July 9, 2021; and

WHEREAS, City seeks to receive services from ClickDimensions through Contractor, LLC (as defined below) as an add-on to the customer relationship management platform that Contractor provides to City at no additional cost; and

WHEREAS, the City’s Public Utilities Commission approved this Agreement by 21-0092 on June 8, 2021; and

WHEREAS, the City’s Board of Supervisors approved this Agreement by 362-21 on July 30, 2021;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term “Agreement” shall mean the Agreement dated **October 28, 2015** between Contractor and City, as amended through the Name Change, dated January 24, 2017 by the:

First amendment, dated **August 23, 2018**, and
Second amendment, dated **August 1, 2019**.

1b. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division (“CMD”). Wherever “Human Rights Commission” or “HRC” appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean “Contract Monitoring Division” or “CMD” respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Section 2. Section 2 **Term of the Agreement** of the Agreement currently reads as follows:

2. Term of the Agreement. Subject to Section I, the term of this Agreement shall be from November 1, 2015 to October 31, 2021. After October 31, 2021 the City will have the option ("the second option") to extend the contract for three years at the City's sole and absolute discretion. However, unless Contractor notifies City at least eighteen months prior to the expiration of contract that it does not wish to exercise the second option, the second option will then be exercised or declined at the City's sole and absolute discretion. In no event shall the agreement with its original period and first and second option periods exceed nine total years. In exercising its options, the City will endeavor to notify Calpine Energy Solutions, LLC in writing of the City's decision to exercise or decline the option within eighteen months of the end of the agreement period, with the City's option expiring should the City fail to exercise the option prior to six months before the end of the agreement period. In no event shall the deadlines provided for in this section supersede other rights or remedies given in other sections of this Agreement.

Such section is hereby amended in its entirety to read as follows:

2. Term of the Agreement. Subject to Section I, the term of this Agreement shall be from November 1, 2015 to October 31, 2024.

2b. Section 5. Section 5 **Compensation** of the Agreement currently reads as follows:

5. Compensation. Compensation shall be made in monthly payments on or before the thirtieth day of each month for work, as set forth in Section 4 of this Agreement, that the General Manager of the San Francisco Public Utilities Commission, in his or her reasonable discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed \$18,769,225 (Eighteen Million Seven Hundred Sixty Nine Thousand, Two Hundred Twenty Five Dollars). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the San Francisco Public Utilities Commission as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments. Contractor shall have no obligation to perform Services in excess of the amount designated hereinabove, as such amount may be amended from time to time by mutual agreement between the Parties.

Such section is hereby amended in its entirety to read as follows:

5. Compensation. Compensation shall be made in monthly payments on or before the thirtieth day of each month for work, as set forth in Section 4 of this Agreement, that the General Manager of the San Francisco Public Utilities Commission, in his or her reasonable discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed \$32,645,425 (Thirty Two Million Six Hundred Forty Five Thousand Four Hundred Twenty Five Dollars). The breakdown of costs associated with this Agreement appears in Appendix B, June 2021 Revision, " attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the San Francisco Public Utilities Commission as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments. Contractor shall have no obligation to perform Services in excess of the amount designated hereinabove, as such amount may be amended from time to time by mutual agreement between the Parties.

2c. Withholding. Section 10c is hereby added to "Taxes" to read as follows:

10.c. Withholding. Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

2d. Limitations on Contributions. Section 42 is hereby replaced in its entirety as follows:

42. Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

2f. Appendix A. Appendix A is hereby replaced in its entirety by Appendix A, June 2021, attached to this Amendment and fully incorporated within the Agreement. To the extent the Agreement refers to Appendix A in any place, the true meaning shall be Appendix A, June 2021 Revision, which is a correct and updated version.

2g. Appendix B. Appendix B is hereby replaced in its entirety by Appendix B, June 2021 Revision, attached to this Amendment and fully incorporated within the Agreement. To the extent the Agreement refers to Appendix B in any place, the true meaning shall be Appendix B, June 2021 Revision, which is a correct and updated version.


3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after **the date of this Amendment.**

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

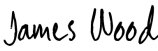
CITY

Recommended by:

DocuSigned by:

360EAE264D5E47C...
Michael Carlin
Acting General Manager
San Francisco Public Utilities Commission

CONTRACTOR

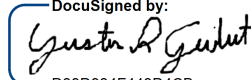
Calpine Energy Solutions, LLC

DocuSigned by:

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James M. Wood
President

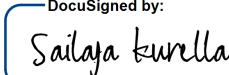
City vendor number: 0000027863

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 
D39D934F443D4CB...
Gustin R. Guibert
Deputy City Attorney

Approved:

By: 
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Sailaja Kurella
Acting Director of the Office of Contract
Administration, and Purchaser

Appendix A (June 2021 Revision): Services to be provided by Contractor

Appendix B (June 2021 Revision): Calculation of Charges

Appendix A, June 2021 Revision

Services to be provided by Contractor

Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's and its proposal dated **June 2015**. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and its implementing task orders shall control over the RFP and the Contractor's proposal.

1. Description of Services

The primary role of the Contractor will be to provide comprehensive customer care, account management, billing, and data services for CleanPowerSF, the City and County of San Francisco's Community Choice Aggregation Program, including: (1) management of CleanPowerSF customer accounts and billing; (2) exchange of customer usage, billing and payment data with PG&E; ; and (3) provision of customer relationship manager data systems, integrated voice response phone system, and other specified customer service support, as further detailed below. CleanPowerSF is operated through the City.

These following tasks provide general guidance to the Contractor as to the anticipated scope of work which the SFPUC reserves the right to modify or delete:

Task 1. Customer Enrollment

- 1.1. Administer pre-enrollment activities required to track customer enrollment and establish procedures for exchanging and processing of Community Choice Aggregation Service Requests (CCASRs) via PG&E's electronic data interchange (EDI) protocol at program start-up and during steady-state operations.
- 1.2. Coordinate with CleanPowerSF to administer the issuance of the statutorily required opt-out notices.
- 1.3. Process CCASRs to/from PG&E, including but not limited to enrollment in CleanPowerSF service and customer initiated returns to bundled utility service or customer initiated returns to direct access service.
- 1.4. Maintain and provide, as needed, a record of customers who have been offered service with CleanPowerSF but have elected to opt out, either before or after starting service with CleanPowerSF.

Task 2. Data and Billing Administration

- 2.1. Billing Administration Services

- 2.1.1. Obtain all customer usage data from PG&E's meter data management agent (MDMA) server to allow for timely billing (according to PG&E's requirements).
- 2.1.2. Maintain and timely communicate the amount to be billed by PG&E for services provided by CleanPowerSF, according to PG&E's applicable billing window.
- 2.1.3. Receive and maintain all data related to payment transactions toward CleanPowerSF's charges from PG&E after payment is received by PG&E customers.
- 2.1.4. Maintain all necessary electronic interfaces with PG&E, which provide for the communication by Internet and EDI between the Contractor and PG&E to confirm system compatibility related to CCASRs, billing collections, meter reading, and electricity usage data.
- 2.1.5. Maintain accessible archives of billing records for all CleanPowerSF customers from the start of CCA service or period of no less than five years.
- 2.1.6. Maintain a table of rate schedules provided by CleanPowerSF, including voluntary renewable energy tariffs.
- 2.1.7. Review CleanPowerSF rates to PG&E accounts to ensure that the proper rates are being applied to the accounts.
- 2.1.8. Use commercially reasonable efforts to remedy billing errors for any customer in a timely manner, no more than two billing cycles.

2.2. Customer Information Systems:

- 2.2.1. Maintain an accurate customer database of all San Francisco electric customers eligible for CleanPowerSF's CCA service and identify each customer's enrollment status, tariff election(s), payment history, collection status, on-site generating capacity, if applicable, and any correspondence with customer as well as other information that may become necessary to effectively administer CleanPowerSF's CCA program. Information in this database will be based on the information provided by PG&E and/or the customer.
- 2.2.2. Allow and provide a means for CleanPowerSF to have functional access to the online database, to view customer email or written letter correspondence, to view information on customer phone calls, and to add customer interactions and other account notes.
- 2.2.3. Maintain and provide as-needed historical usage data (as provided by PG&E) on all customers going back from one year prior to the start of CCA service or 5 years, whichever is shorter.
- 2.2.4. Maintain viewing access, available to appropriate CleanPowerSF staff, to billing records/details of CleanPowerSF customers. The Contractor shall use

commercially reasonable efforts to include functionality that supports the intuitive parsing and labeling of files provided by PG&E.

- 2.2.5. Following implementation of CCA service, certain ad hoc functional enhancements and/or modifications to the customer information system may be requested by CleanPowerSF. Such enhancements and/or modifications shall be completed by the Contractor to the extent that such enhancements and/or modifications will not compromise essential functions of the customer information system. In the event that the anticipated time required for the Contractor to complete CleanPowerSF's requested enhancements and/or modifications exceeds 120 hours per quarter, the Contractor shall notify CleanPowerSF prior to proceeding.
- 2.2.6. Develop documentation/user guides for any new functionality added to customer information systems.

2.3. Customer Program Administration:

- 2.3.1. Maintain and communicate as needed records of net energy metering (NEM) credits and production statistics for participating CleanPowerSF customers to support on-bill data posting and periodic account settlement/true-up consistent with applicable provisions of CleanPowerSF's net energy metering program.
- 2.3.2. When requested by CleanPowerSF, place on-bill repayment charges on the relevant customer accounts.
- 2.3.3. Maintain records of customer participation in program offerings of CleanPowerSF in Contractor's Customer Information Systems and include this data in reports as requested.
- 2.3.4. Develop functionality for enrolling customers in CleanPowerSF programs in Contractor's Customer Relationship Management database and/or online portals as requested.
- 2.3.5. When requested by CleanPowerSF, place identified charges on customer accounts.
- 2.3.6. As requested, provide reports on CleanPowerSF program offerings, including information on customer enrollment and financial summaries.
- 2.3.7. Participate in coordinating discussions with CleanPowerSF and PG&E, as necessary, to encourage the effective administration of CleanPowerSF's net-energy metering program, or other programs, with regard to bill presentment, credit tracking and account settlement. Assist in troubleshooting and resolving, through process and/or system modifications, any issues that may result in CCA customer confusion and/or misinformation relates to CleanPowerSF's net-energy metering program.

2.4. Data Security:

- 2.4.1. Maintain all data according to CleanPowerSF's customer privacy policy and the requirements of the California Public Utilities Commission decisions including D.12-08-045, including a daily backup process.
- 2.4.2. Maintain an agreed upon security breach policy.
- 2.4.3. Every three years beginning in 2019, perform an independent audit of data privacy and security practices and supply a report of the audit's findings to CleanPowerSF by March 1.
- 2.5. Energy Data Management/Reporting:
 - 2.5.1. The Contractor shall provide CleanPowerSF, or CleanPowerSF's Scheduling Coordinator (SC) with Settlement Quality Meter Data (SQMD) as required from the California Independent System Operator (CAISO). Upon CleanPowerSF's request, the Contractor shall submit the SQMD directly to the CAISO on behalf of CleanPowerSF.
 - 2.5.2. CleanPowerSF agrees that the Contractor shall have no responsibility for any charges or penalties asserted by the CAISO associated with the SQMD under an indemnity or otherwise, unless the charges or penalties are resulting from late submission of the SQMD to CleanPowerSF, CleanPowerSF's SC or the CAISO directly. If such late submission charges or penalties are incurred, CleanPowerSF may deduct a sum representing the charges from any money due to Contractor.
 - 2.5.3. Contractor agrees to coordinate SQMD submissions with CleanPowerSF and to submit early Operational Meter Analysis and Reporting (OMAR) data to CleanPowerSF at least three business days in advance of required submission to CAISO for review and shadow settlement calculations.
 - 2.5.4. The contractor shall prepare the SQMD in accordance with prudent utility practice, however the Contractor hereby disclaims in advance that any representation is made or intended that the SQMD is necessarily complete or free from error. Contractor agrees to share SQMD preparation and calculation methodology with CleanPowerSF in advance of service commencement.
 - 2.5.5. Serve as a Qualified Reporting Entity (QRE) for: 1) certain locally situated, small-scale renewable generators supplying electric energy to CleanPowerSF through a feed-in tariff; and/or 2) certain locally situated, small-scale renewable generators that may be owned and/or controlled by CleanPowerSF, supplying electric energy to CleanPowerSF through such arrangements, should this service be deemed necessary by CleanPowerSF. QRE services will be provided by Contractor consistent with terms and conditions agreed to by both Parties via QRE service agreement or agreements ("QRE Service Agreement"). Parties shall in good faith negotiate and execute QRE Service Agreement(s), as needed.
 - 2.5.6. Submit a monthly generation extract file to the Western Renewable Energy Generation Information System (WREGIS) on CleanPowerSF's behalf, which will conform to the characteristics and data requirements set forth in the WREGIS interface control document for QREs.

- 2.5.7. For the purpose of collecting applicable generation and usage data for CleanPowerSF's renewable energy projects and consistent with PG&E's applicable meter servicing arrangement, serve as designated "subcontractor" for certain renewable energy projects: the Contractor shall receive applicable electric meter data from PG&E and shall provide such data to CleanPowerSF for purposes of performance tracking and invoice creation.
- 2.5.8. Assist CleanPowerSF in completing requisite generation registration materials, as such materials may be required by WREGIS, the California Energy Commission, the California Public Utilities Commission and/or other entities to effect the successful crediting of renewable energy certificates, as appropriate, to CleanPowerSF's WREGIS account. These services shall be limited to assistance with the process and shall not involve providing regulatory or legal advice.

2.6. Reporting:

- 2.6.1. Ensure monthly status reports are provided during the first week of each month.
- 2.6.2. Ensure weekly status reports are provided during all enrollment periods.
- 2.6.3. The Contractor shall provide the following reports, frequency and delivery methods:

Report	Frequency	Delivery Method
4013 Data	Weekly	SFTP
Active Accounts Summary	Monthly	SFTP
Aging	Weekly, monthly	SFTP
Call Center Agent Summary	Weekly	Email
Call Center Agent Unavailable	Monthly	Email
Call Center Agent Timecard	Weekly	Email
Call Center Contact History	Weekly	Email
Call Center Statistics	Monthly	Email
Cash Receipts	Weekly, monthly	SFTP
Customer Data (for upload to Salesforce)	Weekly	SFTP
Customer Snapshot	Weekly, monthly	SFTP
Days to Invoice	Weekly, monthly	SFTP

Delinquent Accounts List	Monthly	SFTP
Delinquent Dropped Accounts	Monthly	SFTP
Invoice Summary Report	Weekly, monthly	SFTP
MDEF Details (Initial, Final)	Monthly	SFTP
MDEF Submission	Daily	SFTP
Move-In Accounts Mailing List	Weekly	SFTP
Opt out with Rate Class	Weekly, monthly	SFTP
Retroactive Returns	Monthly	Email
Sent to Collections	Monthly	SFTP
SuperGreen Upgrades	Weekly, monthly	SFTP
Taxes	Monthly	SFTP
Transaction Summary	Monthly	SFTP
Unbilled Usage	Monthly	SFTP
Uninvoiced Transaction Summary	Monthly	SFTP
YTD Usage by Rate Class	Monthly	SFTP

2.6.4. Contractor and CleanPowerSF shall mutually determine the format for each report.

2.7. Mailing Lists:

- 2.7.1. Provide customer mailing and emailing list to CleanPowerSF and/or its designated printer for new move-in customer notices and opt out confirmation letters routinely within 7 days
- 2.7.2. Provide a customer mailing list to CleanPowerSF and/or its designated printer for customers that meet the delinquency threshold set forth in the CleanPowerSF Delinquent Accounts, Bad Debt and Collections Policy. If no payment is received from the customer within the time frame set forth in the policy, issue a CCASR to return the customer to PG&E and levy the applicable fees.
- 2.7.3. Provide a customer mailing list to CleanPowerSF and/or its designated printer for customers eligible for Net Surplus Compensation consistent with applicable provisions of CleanPowerSF's net energy metering program.
- 2.7.4. Provide a customer mailing and emailing list to CleanPowerSF and/or its designated printer for annual mailings, including the Joint Rate Mailer and Product Content Labels for CleanPowerSF's product offerings.

2.8. Quality Assurance:

- 2.8.1. Contractor shall take reasonable care to ensure that its work products associated with carrying out the services in this Addendum are free of error including typographical, formatting, and other inconsistencies before delivering work products to CleanPowerSF.

Task 3. Customer Services:

- 3.1. Staff a call center during any statutory enrollment period twenty-four (24) hours a day, seven(7) days a week.
- 3.2. Staff a call center during non-enrollment periods between the hours of 7AM and 7 PM Pacific Time zone Monday through Friday, excluding any PG&E and/or City holidays.
- 3.3. Ensure that a sufficient number of data manager experts are available to seamlessly manage escalated calls between the hours of 8AM and 5PM Pacific Time zone Monday through Friday, excluding any PG&E, Contractor and/or City holidays.
- 3.4. Receive calls from CleanPowerSF customers referred to the Contractor by PG&E or the City's customer service personnel and receive calls from CleanPowerSF customers choosing to contact the Contractor without referral from PG&E.
- 3.5. Record all inbound calls and make available to CleanPowerSF staff upon request. Maintain an archive of such recorded calls for a minimum period of twenty-four (24) months.
- 3.6. During inbound calls, attempt to collect and/or confirm current email, mailing address and phone number of CleanPowerSF customers (and update the customer database accordingly).
- 3.7. Respond to telephone inquiries from CleanPowerSF customers using a script developed and updated quarterly by CleanPowerSF in cooperation with the Contractor. For questions not addressed within the script, the Contractor shall refer inquires back to PG&E or CleanPowerSF, as appropriate.
- 3.8. Ensure call center staff are trained on and have fluency in the appropriate call scripts by monitoring and reporting on call center recordings as described in Section 3.14.
- 3.9. Provide translation services for messaging and inbound calls. Translation services must be available for Spanish Tagalog, Russian, Chinese (Mandarin and Cantonese), Korean, and Vietnamese.
- 3.10. Respond to customer inquiries along the following guidelines for customer calls:
 - 3.10.1. A minimum of 80% of all calls will be answered within twenty(20) seconds.
 - 3.10.2. 100% of voicemail messages will be answered within one (1) business day.

- 3.11. Respond to customer inquiries along the following guidelines for customer emails:
 - 3.11.1. 100% of emails receive an immediate automated acknowledgement and provide report upon request to CleanPowerSF that substantiates this requirement has been met.
 - 3.11.2. 95% of emails receive a customized response within one (1) business day of receipt.
 - 3.11.3. 100% of emails receive a customized response within three (3) business days of receipt.
- 3.12. Respond to customer inquiries along the following guidelines for customer letters and faxes:
 - 3.12.1. 95% of written correspondence is responded to within five (5) business days of receipt.
 - 3.12.2. 100% of written correspondence is responded to within ten (10) business days of receipt.
- 3.13. Respond to customer inquiries along the following guidelines for customer complaints:
 - 3.13.1. Customer complaints on matters under the control of CleanPowerSF: Supplier will relay the complaint to CleanPowerSF staff within one (1) business day. CleanPowerSF staff will decide on a course of action to resolve the complaint and communicate it to the customer within three (3) business days. Supplier will communicate the complaint resolution to the customer within ten (10) working days.
 - 3.13.2. Customer complaints on matters under the control of PG&E: Supplier will refer the customer to PG&E.
 - 3.13.3. Maintain records of customer complaints broken down by customer class, number of complaints, type of complaint and method of resolution.
- 3.14. Track and report quarterly on call center contract quality with criteria, including:
 - 3.14.1. Use of appropriate greetings and call center scripts
 - 3.14.2. Courtesy and professionalism
 - 3.14.3. Capturing key customer data
 - 3.14.4. Providing customers with correct and relevant information
 - 3.14.5. First-contact or first-call resolution
 - 3.14.6. Accuracy in data entry and call coding
 - 3.14.7. Appropriate grammar and spelling in written communication (including email)

- 3.15. Provide a contact telephone number to PG&E for placement on the invoice to allow CleanPowerSF customers to contact the Call Center directly.
- 3.16. In coordination with CleanPowerSF, participate in a bi-annual cross training to PG&E call center management/supervisory staff.
- 3.17. Participate in coordinative meetings, at CleanPowerSF's request, to promote the resolution of any customer service issues. Such meetings may include CleanPowerSF's management/staff, the Contractor's management/staff, and/or PG&E's management/staff, as necessary, and may require on-site participation by the Contractor's management/staff.
- 3.18. Provide CleanPowerSF with access to records of customer communications for spot-check and audit purposes.
- 3.19. Maintain records of customer feedback.
- 3.20. Provide standard contact center software reporting at regular cadence and post-call survey results as indicated in section 2.6 of this agreement.
- 3.21. Provide access to a configurable Interactive Voice Response ("IVR") self-service system, according to parameters set by CleanPowerSF, and track how many customers start and complete self-service options without live-agent assistance. Update IVR process map and scripts as requested by CleanPowerSF.

2. Task Orders

Performance of the service under this Agreement will be executed according to a task order process, and Contractor is required to provide adequate quality control processes and deliverables in conformance with the technical requirements of the task order. The San Francisco Public Utilities Commission (SFPUC) Project Manager will initially identify tasks and request the Contractor to propose a project scope, sub tasks, staffing plan, LBE utilization, schedule, deliverables, budget and costs to complete the task in accordance with Appendix B. All costs associated with the development of the scope of work shall be borne by Contractor. A final task order will be negotiated between the SFPUC Project Manager and the Contractor and then submitted to the Bureau Manager for approval. However, as provided in the RFP, the budget, if applicable, identified for tasks is an estimate, and the City reserves the right to modify the applicable budget allocated to any task as more specific information concerning the task order scope becomes available.

The task order request will be processed for Controller certification of funding, after which a Notice to Proceed will be issued. The Contractor is hereby notified that work cannot commence until the Contractor receives a written Notice to Proceed in accordance with the San Francisco Administrative Code. Any work performed without a Notice to Proceed will be at the Contractor's own commercial risk. The calculations of costs and methods of compensation for all task orders under this Agreement shall be in accordance with Appendix B.

3. Performance Evaluation

Performance evaluations support the SFPUC's objective of continuously improving the quality of Contractor services. The SFPUC may or may not, at its sole discretion, conduct evaluation/s of Contractor's performance. Ratings are ultimately the decision of the SFPUC and are not subject to negotiation with the Contractor. However, the Contractor may provide comments on a performance evaluation form if an evaluation is performed. In the event that the SFPUC conducts performance evaluation(s) of the Contractor, such performance evaluation(s) shall not confer any express or implied rights upon Contractor, nor shall they shift any liability to the SFPUC for the Contractor's performance of the contract.

4. Reports

Contractor shall submit written reports as requested by the SFPUC. Format for the content of such reports shall be determined by the SFPUC. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

5. Department and Contractor Liaisons

In performing the services provided for in this Agreement, Contractor's liaison with the SFPUC will be Michael Hyams (the "SFPUC Project Manager"). SFPUC's liaison with Contractor will be Josh Brock (the "Calpine Project Manager").

6. Transition of Responsibilities

6. Transition-Out Plan. With a minimum of six months' notice by City to Contractor, Contractor shall prepare and deliver to the City, as set forth in this Agreement, a Disentanglement Plan, or Transition-Out Plan, for transitioning the provision of Services, or portion thereof, under this Contract to the City's alternate service provider in the event of: (i) the expiration or termination of the Term; or (ii) the City's election during the Term pursuant to obtain any portion, component, subset or all of the Services offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, or to provide the same to itself.
 - 6.1. In the event that CleanPowerSF elects to assume all or a portion of call center duties from Contractor, the per-meter-per-month fee shall be reduced as stipulated in Appendix B-1 Pricing Schedule.
 - 6.2. Customer Services - Transition-Out Plan for Customer Care Services shall include:
 - 6.2.1. Detailed training material for Customer Care activities as well as back office activities
 - 6.2.2. IVR scripting
 - 6.2.3. Access to Contractor Customer Information Systems/Billing system through web interface will be provided during transition period or as long as City elects to continue receiving this service

- 6.2.4. Detailed training program that includes both face-to-face and interactive web-based training (for set-up and ongoing within the 6 month transition period)
- 6.2.5. “Train the Trainer” Training including CCA program information as well as full system training which will include system navigation, order processing, task creation and completion, and account inquiry, creation and review
- 6.2.6. An experienced call center employee dedicated to CleanPowerSF to support City employees and take calls for a period of 30 days after cutover date.
- 6.2.7. Option to allow for complex data or energy market questions to be forwarded from CleanPowerSF supervisor to Contractor personnel during the transition as may be required. If support is needed past the transition period, contractor agrees to negotiate with CleanPowerSF on a mutually agreeable fee for this service.
- 6.2.8. Should the City elect to partially transition Customer Services such that a mix of City employees and Contractor employees are providing call center services:
 - 6.2.8.1. Contractor and City shall mutually develop and agree upon a Partial Transition Plan covering roles and responsibilities related to call center hours and staff coverage, supervising call center employees, recording inbound calls, providing an Interactive Voice Response (IVR) system, and responding to customer emails, faxes, and written correspondence.
 - 6.2.8.2. Contractor shall make commercially reasonable efforts to maintain the Service Level Agreements contained in Task 3, subsections 3.10, 3.11, and 3.12, as applicable according to the Partial Transition Plan.
- 6.2.9. It is noted that Customer Services was identified by the SFPUC and Contractor as the principal means for the Contractor to meet LBE requirement in 3.3.b.2. Should the City take over these services, the Contractor should in good faith seek to meet the LBE requirement, to the extent that Contractor’s scope of work allows for subcontracting while maintaining operational continuity and data security. Additionally, while the Contractor will make a good faith effort to identify other LBE opportunities, the SFPUC recognizes that additional LBE spending may not be feasible as a result of the SFPUC assuming responsibility for Customer Service staffing.
- 6.2.10. Should the City partially or completely take over customer services functions described in Task 3, Contractor shall only be responsible for the following subtasks contained in that section: 3.3, 3.5, 3.9, 3.11.1, 3.15 through 3.21.

6.3. Data Manager Services - Transition-Out Plan for Data Manager Services shall include:

- 6.3.1. Delivery of City Data. Contractor shall provide to the City all City data and documentation, in a format or formats acceptable by CleanPowerSF, and other information reasonably requested by the City in connection with the transition

that is sufficient to enable the City, or another reasonably competent service provider, to fully assume the provision of any terminated Services, except as Contractor is otherwise required to retain such data under this Contract or by law. Contractor shall destroy all copies of City data not turned over to the City.

6.3.2. The processes, systems, and people related to Data Manager Services within this agreement are unique to Contractor and therefore will not be included in the Transition-out Plan for Data Manager Services.

6.3.3. Contractor shall implement the Transition-Out Plan and perform all tasks in a timely manner, so that disruption or discontinuity in service from Contractor to the City or City's designee for the Transition-Out is minimized to the extent practicable. Contractor shall participate in meetings with the City and the City's alternate service provider as reasonably required by the City in planning for a transition and implementing the Transition-Out Plan.

7. Disentanglement Services. Subject to the performance by the City and any subsequent provider of services similar to the Services of all actions reasonably expected of each party in connection with the transition, Contractor shall cooperate fully with the City and third parties and shall take all actions reasonably requested by the City or necessary to accomplish, by no later than eighteen (18) months after: (i) the effective date of expiration or termination of the Term or (ii) the City's election during the Term to obtain any portion, component, subset or all of the Services offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, or to provide the same to itself, a smooth, complete transition of responsibility for the Services being terminated from Contractor to the City, or to any replacement provider designated by the City (a "Disentanglement"), with, to the extent practical, no or minimal material interruption of or adverse impact on the City. In the event the City elects to terminate any Service (but not all Services in the aggregate) pursuant to the terms hereof. Contractor shall perform its Disentanglement obligations hereunder to the extent applicable to the Service or Services being terminated. Contractor's obligations hereunder regarding the collection and payment to the City of administrative fees shall continue throughout Disentanglement.

8. Charges. All Disentanglement Services performed by Contractor during the transition shall be performed by Contractor at no additional cost to the City. Unique services requested by the City will be priced as agreed upon by the parties using the hourly rate identified in Appendix B-1 (The City may take the Customer Care Services in-house at any time given the appropriate notice under the agreement).

Appendix B (June 2021 Revision)

Calculation of Charges

As part of Contractor's proposal dated June 2015, Contractor submitted proposed billing rates, attached hereto as Appendix B-1, Pricing Schedule, for the requested tasks required per the Description of Services to be provided by Contractor, Appendix A (June 2021 Revision), incorporated herein by reference.

As provided in the Pricing Schedule, the budget identified for tasks is an estimate, and the City reserves the right to modify the budget allocated, if applicable, to any task as more specific information concerning the task order scope becomes available.

1. Billing Rates

Contractor's unit fees and hourly direct labor billing rates as stated in Appendix B-1 (June 2021 Revision) will be the billing rates for the specified cost components. Direct labor billing rates may not exceed the lowest rate charged to any other governmental entity except the City and County of San Francisco. Direct labor billing rates will be fixed for the first two (2) years of the contract, and may be adjusted annually thereafter. The first adjustment may be made no earlier than the second anniversary of the effective start date as indicated in the original Notice of Contract Award letter. The amount of the adjustment is limited to a maximum of the CPI annual percentage change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year. No increase, including the annual CPI adjustment, is allowed to billing rates exceeding \$220 per hour, unless SFPUC Project Manager and SFPUC Bureau Manager authorize an increase to the rate in writing.

2. Personnel Changes

Key team members identified in Contractor's proposal will be the Lead Project Personnel assigned to the project. Any proposed changes to Contractor's Lead Project Personnel, including key personnel identified for the Community Benefits task, must be approved in writing by the SFPUC Project Manager. The SFPUC Project Manager must also approve the assignment of any staff assigned to provide services that will be billed at the hourly labor rate noted in Appendix B-1, prior to commencing any work on a task order. All personnel must meet all qualification requirements established by the Agreement.

3. Subcontractor make-up and documentation

Second-tier and pass-through subcontracting is prohibited. Additional subcontractors may be added to the contractor team after obtaining pre-authorization by the SFPUC Project Manager, Bureau/Division Manager and the Contract Monitoring Division.

4. Invoice Requirements

The SFPUC is automating its contracting and invoice payment processes with online software systems (SOLIS). The following processes are being automated: Contract Certification, Insurance Compliance, Task Order Certification, Timekeeping, Invoice Approval, and Invoice Payment. As part of its contracting obligations, the Contractor is required to 1) become an authorized user of these systems, 2) attend user training for these

systems; and 3) utilize these systems for the purposes for which they are intended. Contractor shall not bill the SFPUC to use these systems. Contractor shall not charge SFPUC to send appropriate personnel to user training.

Contractor shall follow the invoicing and supporting documentation instructions as detailed in the SOLIS training or otherwise prescribed by the SFPUC.

Invoice Supporting Documentation:

All labor hours must be substantiated by timesheet summaries extracted from the Contractor's accounting system. Each timesheet summary shall include the staff person's name, company, dates of the days worked, and the number of hours worked each day.

Mileage ODCs must be accompanied by mileage logs providing the beginning and ending mileage to substantiate the variable portal-to-portal distance and local driving required while performing the work. All other ODCs must be substantiated with copies of original receipts including a brief description for each receipt memorializing the purpose.

CMD Form 7 "Progress Payment Form" must be included with each invoice to identify the participation and amount payable to the subcontractors.

CMD Form 9 "Payment Affidavit" must be submitted within ten (10) days of receiving payment for each invoice to document the subcontractor's payment by the prime contractor.

Appendix B-1 (June 2021 Revision)

Pricing Schedule

Customer Services Fee:

- \$0.20 per active meter per month
- This fee will be reduced by \$0.04 per meter per month per Tier 1 agent replaced to a max of \$0.16 in total per meter per month. Once all call center agents are transferred to CleanPowerSF the fee will be reduced by \$0.16 per meter per month.
- If all of call center is replaced including oversight, quality control program, training, and IVR, the reduction is \$0.20 per meter per month inclusive of the \$0.16 for the Tier 1 agent replacement fee reduction.

A-la-Carte Services:

- \$1.50/minute Call center over-flow and after hour services.
- ClickDimensions
 - The costs related to ClickDimensions services will be passed through to CleanPowerSF without markup, not to exceed \$150,000 over three-year term.
 - CleanPowerSF shall approve all costs prior to Contractor incurring those costs on behalf of CleanPowerSF.
 - Any customization requested by CleanPowerSF that requires Contractor's staff will be charged using a labor rate of \$150 per hour, and all other costs will be passed through without markup.

Customer Enrollment. Billing and Data and Administration Fee:

- \$0.95 per active meter per month

The Fees defined in Appendix B-1 include only the services and items expressly set forth in Appendix A. Unless otherwise agreed to by the Parties in an Addendum, the cost of any additional deliverable provided by Contractor to CleanPowerSF shall be passed through directly to CleanPowerSF without mark-up using a labor rate of \$150.00 per hour.



San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

February 21, 2025

Infrastructure Division
525 Golden Gate Avenue, 8th Floor
San Francisco, CA 94102

Josh Brock, Director of CCA Client Services
Calpine Energy Solutions, LLC
401 West A Street, Suite 500
San Diego, CA 92101
Email: Josh.Brock@Calpinesolutions.com

RE: 1) Notice of Contract Amendment Certification
2) Executed Amendment #4 between the City and County of San Francisco
Public Utilities Commission and Calpine Energy Solutions, LLC.

Dear Mr. Brock,

This letter provides a **Notice of Contract Amendment Certification** for the following contracted work:

Contract ID Number: CS-247(R) (1000007708)
1000000229 - \$170,084.60 (old)
1000007708 - \$34,575,340.40 (new)

Contract Title: Customer and Administrative Services for Community
Choice Aggregation Program

Effective Date: November 20, 2015 to April 30, 2025

Amount: Total value of contract not to exceed
\$34,745,425.00

Work may not be charged against the Contract ID Number. Invoices must be charged against specific task orders only after a *Notice to Proceed* has been issued.

Sincerely,

Rosiana Angel
Infrastructure Budget and Payment Processing

Enclosure: Executed Agreement
cc: Michael Hyams
File/ CS-247(R) Amendment #4 - NCAC

Daniel L. Lurie
Mayor

Kate H. Stacy
President

Joshua Arce
Vice President

Avni Jamdar
Commissioner

Steve Leveroni
Commissioner

Dennis J. Herrera
General Manager

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.



**City and County of San Francisco
Office of Contract Administration
Purchasing Division**

Amendment No. Four

**CS-247(R), Customer and Administrative Services for Community Choice Aggregation
Program**

THIS AMENDMENT (this “Amendment”) is made as of January 23, 2025, in San Francisco, California, by and between Calpine Energy Solutions, LLC (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Director of the Office of Contract Administration.

Recitals

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period, increase the contract amount, and update standard contractual clauses; and

WHEREAS, On May 29, 2015, the City competitively procured the Agreement in accordance with San Francisco Administrative Code Section 21.1 through a Request for Proposals (RFP) and this Amendment is consistent therewith; and

WHEREAS, On June 18, 2012, the San Francisco Public Utilities Commission obtained approval for the original Agreement from the Department of Human Resources on behalf of the Civil Service Commission under PSC number 4141-11/12 in the amount of \$8,000,000 for the period of four years and 30 weeks; and

WHEREAS, On April 1, 2024, the SFPUC obtained approval for this Amendment from the Civil Service Commission under PSC number 4141-11/12 in the amount of \$35,600,000 for the period of 12 years and 43 weeks; and

WHEREAS, On May 14, 2024, the City’s Public Utilities Commission approved this Amendment by Resolution No. 24-0112; and

WHEREAS, On August 1, 2024, the City’s Board of Supervisors approved this Amendment pursuant to San Francisco Charter Section 9.118 by Resolution No. 413-24.

NOW, THEREFORE, Contractor and the City agree as follows;

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term “Agreement” shall mean the Agreement dated October 28, 2015 between Contractor and City, as amended by the:

Certification of Name Change dated January 24, 2017,

First Amendment, dated August 23, 2018,
 Second Amendment, dated August 1, 2019, and
 Third Amendment dated September 1, 2021.

1b. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

1c. San Francisco Labor and Employment Code. As of January 4, 2024, San Francisco Administrative Code Chapters 21C (Miscellaneous Prevailing Wage Requirements), 12B (Nondiscrimination in Contracts), 12C (Nondiscrimination in Property Contracts), 12K (Salary History), 12P (Minimum Compensation), 12Q (Health Care Accountability), 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions), and 12U (Sweatfree Contracting) are redesignated as Articles 102 (Miscellaneous Prevailing Wage Requirements), 131 (Nondiscrimination in Contracts), 132 (Nondiscrimination in Property Contracts), 141 (Salary History), 111 (Minimum Compensation), 121 (Health Care Accountability), 142 (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions), and 151 (Sweatfree Contracting) of the San Francisco Labor and Employment Code, respectively. Wherever this Agreement refers to San Francisco Administrative Code Chapters 21C, 12B, 12C, 12K, 12P, 12Q, 12T, and 12U, it shall be construed to mean San Francisco Labor and Employment Code Articles 102, 131, 132, 141, 111, 121, 142, and 151, respectively.

2. Amendments to the Agreement. The Agreement is hereby modified as follows:

2a. Section 2. *Section 2 Term of the Agreement of the Agreement currently reads as follows:*

2. Term of the Agreement. Subject to Section I, the term of this Agreement shall be from November 1, 2015 to October 31, 2024.

Such section is hereby amended in its entirety to read as follows:

2. Term of the Agreement. Subject to Section I, the term of this Agreement shall be from November 1, 2015 to April 30, 2025.

2b. Section 5. *Section 5 Compensation of the Agreement currently reads as follows:*

5. Compensation. Compensation shall be made in monthly payments on or before the thirtieth day of each month for work, as set forth in Section 4 of this Agreement, that the General Manager of the San Francisco Public Utilities Commission, in his or her reasonable discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed \$32,645,425 (Thirty Two Million Six Hundred Forty Five Thousand Four Hundred Twenty Five Dollars). The breakdown of costs associated with this Agreement appears in Appendix B, June 2021 Revision, " attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the San Francisco Public Utilities Commission as being in accordance with this Agreement. City may

withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments. Contractor shall have no obligation to perform Services in excess of the amount designated hereinabove, as such amount may be amended from time to time by mutual agreement between the Parties.

Such section is hereby amended in its entirety to read as follows:

5. **Compensation.** Compensation shall be made in monthly payments on or before the thirtieth day of each month for work, as set forth in Section 4 of this Agreement, that the General Manager of the San Francisco Public Utilities Commission, in his or her reasonable discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed \$34,745,425 (Thirty Four Million Seven Hundred Forty Five Thousand Four Hundred and Twenty Five Dollars). The breakdown of costs associated with this Agreement appears in Appendix B, June 2021 Revision.” No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the San Francisco Public Utilities Commission as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments. Contractor shall have no obligation to perform Services in excess of the amount designated hereinabove, as such amount may be amended from time to time by mutual agreement between the Parties.

2c. **Section 58.** Section 58 (Reserved) is hereby replaced in its entirety to read as follows:

58. Consideration of Salary History. Contractor shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Article 141. Information about and the text of Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of Article 141, irrespective of the listing of obligations in this Section.

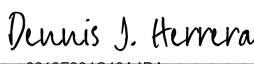
3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY


Recommended by:

DocuSigned by:

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Dennis J. Herrera
General Manager
San Francisco Public Utilities Commission

CONTRACTOR

Calpine Energy Solutions, LLC

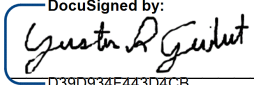
Signed by:

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Sean Fallmer
President, Calpine Retail

City Supplier Number: 0000027863

Approved as to Form:

David Chiu
City Attorney

By: DocuSigned by:

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Gustin R. Guibert
Deputy City Attorney

Approved:

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

By: Signed by:

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SFPUC Customer Administrative Services Community Choice Aggregation

Agreement No. PUC.PRO.0297

6/13/2024



San Francisco
Water Power Sewer
Services of the San Francisco Public Utilities Commission

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1 RFP Summary

1.1 Introduction

The San Francisco Public Utilities Commission (SFPUC), a department of the City and County of San Francisco ("City"), seeks to retain the services of a qualified Proposer¹ to provide comprehensive and integrated customer data management, billing, and data exchange services for CleanPowerSF, the City and County of San Francisco's Community Choice Aggregation Program. These services include: (1) management of CleanPowerSF customer accounts and billing services, billing data, and reporting; (2) exchange of customer usage, billing and payment data with PG&E; (3) provision of a customer relationship management system for CleanPowerSF customer service use; (4) preparation and submission of settlement quality meter data; and (5) other related services as needed.

The SFPUC seeks to select a Proposer with proven expertise and extensive experience in the following areas: Customer Data Management and Reporting

- Billing Process Management
- Technical Customer Communications Services

The anticipated total amount and duration of the Professional Services Agreement ("Agreement") are as follows:

Agreement Amount: \$17,000,000.00

Agreement Duration: 3 Years

The Agreement amount is inclusive of all reimbursable costs and all optional tasks. The SFPUC reserves the right to commence, close, reduce, or extend Proposer services at any time in response to changing needs. In addition, the parties may extend the agreement and may increase the agreement amount consistent with city requirements. The SFPUC shall have the option to, at its sole discretion, extend the term of the Agreement, for up to three additional years.

The SFPUC may incorporate the Task Descriptions set forth herein into the Agreement as the applicable scope of services. The standard terms of the Agreement will be non-negotiable.

The SFPUC may post additional information relating to the RFP on the SFBid website (<https://sfbid.sfwater.org/>) after issuance of the RFP. Proposers are responsible for consulting the SFBid website regularly for these updates.

1.2 Tentative RFP Schedule

The following chart provides tentative dates for issuance of the RFP, receipt and evaluation of

¹ "Proposer" refers to any entity responding to this Request for Proposals (RFP).

proposals, as well as award of an Agreement, which are non-binding, and subject to change without prior notice:

Advertisement of RFP	6/12/2024
Pre-Submittal Conference	6/25/2024
Deadline for Proposers to Submit Questions	7/2/2024
Deadline for Proposers to Submit Proposals.....	7/24/24
Posting of Proposer Ranking	8/28/24
Public Utilities Commission Authorization to Execute Agreement.....	10/8/24
Deadline for Proposer to Achieve Vendor Compliance and Execute Agreement ...	10/22/2024
Notice of Award of Agreement	11/12/24

1.3 Pre-Submittal Conference

Pre-submittal conference information:

Time: 2:00 PM

Date: 6/25/2024

Location:

<https://sfwater.zoom.us/j/88113685972?pwd=qAdQWpeO0WIUGbRkqihUd6wE11cf9D.1>

The SFPUC encourages attendance at the pre-submittal conference. The SFPUC will address questions about the RFP at this conference and provide any new information at that time. While City staff may provide oral clarifications, explanations, or responses to any inquiries, the City will not be bound by any oral representation. If the City provides any new and/or substantive information in response to questions raised at the pre-submittal conference, the SFPUC will memorialize the information in a written addendum to this RFP.

The SFPUC highly recommends Prime Proposer’s attendance at the pre-submittal conference. If the San Francisco Contract Monitoring Division (CMD) has established a Local Business Enterprise (LBE) participation requirement, see Section 9.1.1, LBE Subcontracting Participation Requirements.

1.4 Requests for Information and Addenda/Change Notices

All requests for information concerning the RFP, whether submitted before or after the pre-submittal conference, must be submitted in writing via the [SFBid website](#).

The SFPUC will provide any interpretation of, or make any change in, the RFP by addendum, which will become a part of the RFP and of any Agreement that the SFPUC awards. The SFPUC will make reasonable efforts to post any modifications to the RFP in a timely manner on the SFBid website.

Please refer to Sections 8.2 and 8.3 for more information regarding RFP inquiries and addenda/change notices.

1.5 Diversity, Equity, and Inclusion in Contracting

This contracting opportunity is subject to compliance with the San Francisco Administrative Code Chapter 14B LBE subcontracting requirements. The SFPUC encourages diversity within its contracting opportunities. The SFPUC encourages proposals that commit not only to optimize the use of Micro-LBE, Small-LBE, but also to assemble Contractor teams that reflect the diversity of the City and County of San Francisco.

- A. The agency is committed to the promotion of racial equity. On July 14, 2020, by Resolution No. 20-0149, the SFPUC committed to racial justice by condemning systematic racism and vowing to actively promote internal and external racial equity. This effort aligns with the San Francisco Board of Supervisors' (BOS) enactment of Ordinance No. 188-19 in July of 2019, which amended Chapter 12A of the San Francisco Administrative Code to create an Office of Racial Equity with the authority to create a citywide Racial Equity Framework and required City departments to create Racial Equity Action Plans.
- B. The SFPUC encourages Proposers to demonstrate in their proposals actionable commitment at all organizational levels to racial justice and diversity reflective of the City and County of San Francisco in terms of gender, age, ethnicity, and race.
- C. The SFPUC's encouragement of diversity will not affect the qualitative evaluation of proposals for this RFP. Criteria for evaluation is limited to the factors described in Section 6, Evaluation and Selection Criteria.

1.6 Limitations on Communications

From the earlier of either (1) the publication of this RFP on the SFPUC's Contract Advertisement Report, or (2) the date this RFP is issued, until completion of the competitive solicitation process of this RFP, either by cancelation or by final action of the SFPUC Commission, Proposers, subcontractors, vendors, and/or their representatives or other interested parties, may communicate with the SFPUC only as instructed in this RFP.

The SFPUC strictly prohibits any attempt to communicate with or solicit any City official, representative or employee, except as instructed in this RFP. Failure to comply with this communications protocol may, at the sole discretion of the SFPUC, result in the disqualification of the Proposer or potential Proposer from the competitive solicitation process. This protocol does not apply to communications with the City regarding business not related to this RFP.

1.7 Social Impact Partnership (SIP) Program

The SFPUC strives to be a good neighbor in through the communities that are impacted by its water, power and sewer operations, services, and infrastructure. The SFPUC's Social Impact Partnership (SIP) Program provides an opportunity for its contractors to engage in corporate social responsibility supporting our communities.

In December 2022, by Ordinance No. 261-22, the BOS unanimously adopted San Francisco Administrative Code Chapter 21F authorizing the SFPUC to implement a SIP. Participation in the SIP Program by submission of a SIP Proposal and incorporation of Social Impact Commitments in a Covered Contract constitutes a contractor's acknowledgment and agreement that it shall comply with the [SIP Rules and Regulations](#) as may be amended during the term of a Covered Contract.

A Proposer may voluntarily propose SIP Commitments as a part of its written proposal. The Proposer's Social Impact Commitments must directly benefit the communities, neighborhoods, and/or residents served by the SFPUC and/or impacted by its operations. Social Impact Commitments are in the form of financial contributions or volunteer hours to or through a Beneficiary located in the geographic area specified in this RFP. A Beneficiary may be: (1) a nonprofit corporation that has established and maintains valid nonprofit status under Internal Revenue Code Section 501(c)(3), as amended, and all rules and regulations promulgated under that section; (2) an organization that has a fiscal agent that is a nonprofit corporation that has established and maintains valid nonprofit status under Internal Revenue Code section 501(c)(3), as amended, and all rules and regulations promulgated under said section and which provides that organization with fiduciary oversight, financial management, and administrative services related to its operation; or (3) a public school, which may include a public school district, County Office of Education, and/or a public college or university. The following are not eligible Beneficiaries: any (1) City department, office, board, commission, or other entity or (2) City official or employee or Relative of a City official or employee, unless the resulting benefit is incidental to and not unique to the City official or employee or Relative, but rather benefits the general public or a particular community that is the focus or target of the Social Impact Commitment.

The SFPUC invites Proposers to include a SIP Submittal detailing proposed SIP Commitments in accordance with RFP Section 5.2.9 which will become contractual obligations upon contract award. Proposers may be eligible to receive a bonus for a SIP Proposal as set forth in this RFP and consistent with the SIP Rules and Regulations.

1.8 Conflicts of Interest

Proposers, by submission of a proposal, agree to comply fully with and be bound by all applicable provisions of state and local law related to conflicts of interest. The SFPUC advises Proposers to review Section 12 of this RFP carefully before submitting a proposal.

2 Background

2.1 San Francisco Public Utilities Commission

The SFPUC provides retail drinking water and wastewater services to San Francisco, wholesale water to three Bay Area counties, and green hydroelectric and solar power for San Francisco's municipal operations.

The mission of the SFPUC is to:

- Serve San Francisco and its Bay Area customers with reliable, high quality, and affordable water, while maximizing benefits from power operations and responsibly managing the resources entrusted to its care;
- Protect public health, public safety, and the environment by providing reliable and efficient collection, treatment, and disposal of San Francisco's wastewater;
- Conduct its business affairs in a manner that promotes efficiency, minimizes waste, and ensures rate payer confidence; and
- Promote diversity and the health, safety, and professional development of its employees.

The SFPUC is comprised of three separate enterprises. The Water Enterprise is responsible for managing the transmission, treatment, storage, and distribution of potable water to San Francisco's wholesale and retail customers. The Wastewater Enterprise is responsible for managing the collection, treatment, and reuse or disposal of San Francisco's wastewater. The Power Enterprise is responsible for managing wholesale and retail power sales, transmission and power scheduling, energy efficiency programs, street lighting services, utilities planning for redevelopment projects, energy resource planning efforts, and various other energy services.

The SFPUC also has three administrative divisions. External Affairs provides communications and outreach services. Business Services oversees all financial and accounting matters for the entire SFPUC. Infrastructure delivers capital improvement programs.

2.2 SFPUC Policies

The SFPUC has adopted several policies that reflect the agency's commitment to sustainability and environmental stewardship, environmental justice, racial justice, community benefits, and innovative technologies.

A. Environmental Justice Policy

On October 13, 2009, by Resolution No. 09-0170, the SFPUC adopted a comprehensive set of environmental justice guidelines for use in connection with its operations and projects within the City, as required by San Francisco Charter Section 8B. Refer to: https://sfpuc.org/sites/default/files/about-us/policies-reports/Environmental-Justice-Policy_OCT2009.pdf.

B. Community Benefits Policy

On January 11, 2011, by Resolution No. 11-0008, the SFPUC adopted a Community Benefits Policy that seeks to achieve positive community outcomes including: workforce and economic

development (such as contracting with local companies and hiring local workers); innovative environmental programs (i.e., those that minimize adverse impacts); stakeholder and community involvement; arts and cultural programming; educational programs; responsible land use; sustainability; improvements in community health; diversity; and inclusionary initiatives that reflect the SFPUC's values, volunteerism, and monetary or in-kind contributions to the community. The SIP Program is one aspect of the SFPUC's implementation of the Community Benefits Policy. Refer to: https://sfpuc.org/sites/default/files/about-us/policies-reports/CommunityBenefits%20Policy_JAN2011.pdf.

C. Technology Policy

On September 11, 2012, by Resolution No. 12-0165, the SFPUC adopted a Technology Policy that seeks to take advantage of innovative technologies to benefit ratepayers in a manner that is consistent with its Budgetary and Ratepayer Assurance policies, practices and endorsed Level of Service goals. The key principles and criteria shall be consistent with Triple Bottom Line principles that include economic, environmental, social, leadership, and transparency. Refer to: <https://infrastructure.sfwater.org/fds/fds.aspx?lib=SFPUC&doc=1180599&data=454530615>.

D. Racial Justice Policy

On July 14, 2020, by Resolution No. 20-0149, the SFPUC committed to racial justice by condemning systematic racism and vowing to take action to promote internal and external racial equity. This effort aligns with the larger City-wide legislative mandate, [Ordinance No. 188-19](#), where the BOS established the Office of Racial Equity to address racial disparities in City departments and external programs. Refer to: <https://sfpuc.sharefile.com/d-s2a41b40bc55349ac88cbeec897440594>.

2.3 Power Enterprise

The SFPUC's Power Enterprise is responsible for providing electric utility service to the City and County of San Francisco. Through our CleanPowerSF and Hetch Hetchy Power programs, we provide clean, affordable, and reliable electricity to more than 380,000 San Francisco residential, business, and governmental customer accounts. Our power programs help tackle the climate crisis head on.

Instead of relying on fossil fuels, we harness wind, solar, geothermal, and hydro-electric power to serve San Francisco's electricity needs. As a local utility with public oversight, we're committed to achieving a clean energy future for San Francisco, today.

Although the Power Enterprise manages and administers both the Hetch Hetchy Power and CleanPowerSF energy portfolios, the programs serve separate retail customers and operate as two (2) separate lines of businesses, maintaining separate financial and accounting records.

2.4 CleanPowerSF

CleanPowerSF is San Francisco's community choice aggregation (CCA) program, operated by the SFPUC's Power Enterprise. CleanPowerSF began serving customers in May 2016 with the goals of providing: (1) affordable and reliable electricity services to San Francisco residents and

businesses; (2) cleaner energy alternatives advancing the City's Greenhouse Gas reduction goals; (3) investment in local renewable energy projects and jobs; and (4) long-term rate and financial stability.

CleanPowerSF provides retail generation supply service to more than 380,000 customer accounts with an annual sale of approximately 3,000 gigawatt-hours. Since its launch, CleanPowerSF has maintained a participation rate of 96% and has attracted more than 8,000 upgrades to its voluntary 100% Renewable Portfolio Standards (RPS)-eligible renewable SuperGreen product.

3 Scope of Services

3.1 Description of Services

The City seeks to retain the services of a qualified Contractor to assist with the following comprehensive and integrated customer data management, billing, and data exchange services for CleanPowerSF. These include: (1) management of CleanPowerSF customer accounts and billing; (2) exchange and tracking of customer usage, billing and payment data with PG&E ; (3) provision of a customer relationship management system for CleanPowerSF customer service usage; (4) preparation and submission of settlement quality meter data; and (5) other related services as needed.:

The primary role of the Contractor will be to perform the following tasks, including but not limited to:

1. BILLING PROCESS MANAGEMENT
2. CUSTOMER DATA MANAGEMENT
3. CUSTOMER COMMUNICATIONS SERVICES
4. ENERGY DATA MANAGEMET/REPORTING

The Contractor will work under the direction of the SFPUC Power Enterprise's CleanPowerSF staff.

3.2 Agreement Term and Schedule

3 Years

The term of the Agreement awarded through this RFP shall be three years, with the option for the SFPUC to, at its sole discretion, extend the agreement for up to three additional years. The SFPUC reserves the right to commence, close, reduce or extend Contractor's services at any time in response to changing needs

3.3 Detailed Description of Tasks

The following is a detailed description of the tasks required to complete the assignment.

TASK 1 BILLING PROCESS MANAGEMENT

CleanPowerSF's customer billing process will be principally administered through the Contractor, including critical processes outlined in CleanPowerSF's Services Agreement with PG&E and PG&E's Rule 23. The Contractor will be responsible for:

1. Obtaining all customer usage data from PG&E's meter data management agent (MDMA) server to allow for timely billing (according to PG&E's requirements).
2. Calculating and communicating the amount to be billed by PG&E for services provided by CleanPowerSF, according to PG&E's applicable billing window.

3. Receiving and maintaining all data related to (a) payments for CPSF charges received by PG&E and (b) payments from PG&E to CPSF for CPSF charges. Completing the technical testing of all necessary electronic interfaces with PG&E, which provide for the communication by Internet and Electronic Data Interchange (EDI) between the Contractor and PG&E to confirm system compatibility related to community choice aggregation service requests (CCASRs), billing collections, meter reading, and electricity usage data.
4. Demonstrating successful completion of all standard PG&E technical testing prior to customer enrollment and have the capability and signed agreements necessary to communicate or exchange the information using EDI, Internet, or an electronic format acceptable to PG&E.
5. Applying commercially reasonable efforts to remedy billing errors for any customer in a timely manner, which shall not exceed two billing cycles.
6. Maintaining rate schedules provided by CleanPowerSF, conducting analysis for rate changes as needed, and ensuring that rates are charged appropriately to CleanPowerSF customers.
7. Supporting billing-related programs via reporting to CleanPowerSF and external entities as directed by CleanPowerSF, adjustments to enrolled customers, and other related needs as requested by CleanPowerSF.
8. Validate receipt of correct PG&E payments to CleanPowerSF.
9. Managing as-needed billing needs at the request of CleanPowerSF.

TASK 2 CUSTOMER DATA MANAGEMENT

Data management and data exchanges with PG&E will be primarily managed by the Contractor. Storage and management of customer data in a secure, scalable and accessible fashion at all times to CleanPowerSF staff is critical to CleanPowerSF's operations. Under this Task, the Contractor will be responsible for:

1. Maintaining an accurate customer database of all customers offered CleanPowerSF's CCA service. Identify each customer's contact and account information, enrollment status, tariff election(s), billed usage and demand, payment history, on-site generating capacity, if applicable, and maintain records of any correspondence or other communication to or from the customer, as well as other information as needed.
2. Processing requested changes to a customer's choice of services, or CCASR, including but not limited to:
 - a. Enrollment in CleanPowerSF's default and voluntary rate schedule options;
 - b. Enrollment in Net Energy Metering (NEM) , Net Billing Tariff, or other similar billing programs; and
 - c. Customer initiated returns to bundled utility service or customer initiated returns to direct access service.

3. Maintaining an accessible archive of billing and usage records for all CleanPowerSF customers, including historical billing, billing disputes and usage data for the term of this agreement, and transferring the archive to the City at the end of the term.
4. Maintaining and communicating as needed records of net-energy metering credits, as well as usage and generation on a monthly, annual and lifetime basis for CleanPowerSF customers participating in Net Energy Metering or similar programs. As requested by CleanPowerSF staff, support data analysis and processing for NEM related processes or for similar programs.
5. Storing and maintaining all customer data in compliance with California Public Utilities Commission regulations (as outlined in D. 12-08-045 Attachment B), PG&E's data privacy requirements, and CleanPowerSF's Data Privacy Policy.
6. Developing and deploying a data back-up system to provide risk management support.
7. Support data management planning, including providing recommendations to optimize the architecture of CleanPowerSF systems and data to support business optimization.

TASK 3 TECHNICAL CUSTOMER COMMUNICATIONS SERVICES

The Contractor will be responsible for providing functionality to support CleanPowerSF customer service and staff interactions with customers. This includes:

1. Providing and resourcing support for a Customer Relationship Management (CRM) system to support CleanPowerSF's in-house call center, key accounts managers, and program staff, with the following minimum characteristics:
 - a. The CRM should provide consistent and accessible functional access to customer account data in order to enable individual customer support; this includes usage and billing data as well as account details such as rate schedule and contact information;
 - b. The CRM should provide the ability to track customer interactions through notes, call records and mailings;
 - c. The CRM should provide the ability for CleanPowerSF staff to easily create exportable reports and customer lists that include daily call stats that can be accessed at any time to maintain service quality;
 - d. The CRM should provide the flexibility to support and record customer interaction with a variety of CleanPowerSF programs, including but not limited to NEM, Peak Day Pricing, Budget Billing, Solar Inverter Replacement Program, SuperGreen Saver Program and other programs as they are developed; and
 - e. The CRM should be modifiable in response to enhancements or requests from CleanPowerSF staff.
2. Establishing and providing customer access to a configurable Interactive Voice Response (IVR) self-service system, according to parameters set by CleanPowerSF and providing

service in Spanish, Mandarin, Cantonese and Filipino, and tracking how many customers start and complete self-service options without live-agent assistance. Update IVR process map and scripts as requested by CleanPowerSF and provide additional system support as needed.

3. Providing customer mailing lists for new move-in customer notices to CleanPowerSF and providing opt-out confirmation letters to customers, as well as other CleanPowerSF mailing needs, within 7 days of request.
4. Providing an email marketing platform that allows for regular and secure email communication with CleanPowerSF customers, and assisting with developing and managing customer lists within the email marketing platform.
5. Providing an SMS (Text) messaging application that allows for regular and secure SMS messaging with CleanPowerSF customers and sending SMS messages to customers, as requested by CleanPowerSF.

TASK 4 ENERGY DATA MANAGEMENT/REPORTING

CleanPowerSF will rely on the Contractor to generate regular customer data and billing related reports and to comply with the requirements of the California Independent System Operator (CAISO) in regard to meter data settlements and other needs as dictated by CleanPowerSF's role as a load serving entity. The Contractor will be responsible for:

1. Providing CleanPowerSF regular customer data and billing operations reports by a delivery method, as agreed upon, including providing weekly and monthly customer usage and billing status reports to CleanPowerSF on a timely basis. Monthly reports shall be provided within the first week of the next calendar month.
2. Providing CleanPowerSF's Scheduling Coordinator (SC) with Settlement Quality Meter Data (SQMD) of customer usage and generation obtained from PG&E, as required by the CAISO.
3. Prepare and submit SQMD each business day on a rolling basis using the Market Results Interface Settlements (MRI-S) format, as defined in the current CAISO tariff. SQMD must be submitted to the SC at least three days in advance of required submission to CAISO for review and shadow settlement calculations. All SQMD must be submitted in accordance with CAISO, PG&E, and CPUC rules and regulations; the SQMD preparation and calculation methodology must be shared with CleanPowerSF.
4. Serving as a Qualified Reporting Entity (QRE)³ for 1) certain locally situated, small scale

³ WREGIS Qualified Reporting Entities (QRE)-A Qualified Reporting Entity (QRE) in WREGIS is an organization or individual providing renewable generation data to create WREGIS Certificates. QREs may include Balancing

renewable generators supplying electric energy to CleanPowerSF through a feed-in tariff (if adopted in the future); and 2) certain locally situated, small-scale renewable generators that are or may be owned and/or controlled by the SFPUC or CleanPowerSF, supplying electric energy to CleanPowerSF.

6. Submitting a monthly generation extract file to the Western Renewable Energy Generation Information System (WREGIS) on CleanPowerSF's behalf, which conforms to the characteristics and data requirements set forth in the current Western Electricity Coordinating Council (WECC) Interface Control Document-Qualified Reporting Entities.⁴
7. Collecting applicable generation and usage data obtained from the generator for any renewable energy projects CleanPowerSF may own or control consistent with PG&E's applicable metering requirements.
8. Assist CleanPowerSF in completing requisite generation registration materials, as such materials may be required by WREGIS, the California Energy Commission, the California Public Utilities Commission and/or other entities to affect the successful crediting of renewable energy certificates, as appropriate, to CleanPowerSF's WREGIS account from any renewable generation owned or controlled by CleanPowerSF and/or generated under a Feed-in-Tariff if adopted in the future.

Authorities, interconnecting utilities, scheduling coordinators, independent third-party meter readers, or other appropriate parties, so long as the QRE has a signed Customer Agreement with the WREGIS Administrator, has been approved by the WREGIS Administrator, and meets the established guidelines.

" WREGIS Operating Rules," WECC, October 2022,
https://www.wecc.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Administrative/WREGIS%20Operating%20Rules%20October%202022%20Final.pdf&action=default&DefaultItemOpen

⁴ WECC guidance changes periodically

"Interface Control Document–Qualified Reporting Entities," WECC, December 2016, chrome-extension://efaidnbmninnibpcjpcglclefindmkaj/<https://www.wecc.org/Administrative/WREGIS%20QRE%20Interface%20Control%20Document.pdf>

4 Minimum Qualifications

A Proposer must possess the minimum qualifications set forth below to be eligible to submit a proposal in response to this RFP. Proposals must clearly demonstrate possession of the specified minimum qualifications. The SFPUC may reject Proposers that do not clearly demonstrate possession of the minimum qualifications without further consideration. The SFPUC reserves the right to request clarification from Proposers that fail to meet any minimum qualification requirement(s) prior to rejecting a proposal.

4.1 Prime Proposer and Joint Venture Partners Qualifications

A Proposer cannot be a Prime Proposer or Joint Venture (JV) Partner on more than one proposal. In addition, a Prime Proposer or JV Partner that intends to be listed as a subcontractor on another competing proposal must fully disclose that intention to the impacted parties. Any JV responding to this RFP must clearly identify the lead Proposer (referred to hereafter as the Lead JV Partner).

- A. To qualify as a **Prime Proposer** or **Lead JV Partner** for the Agreement, the Prime Proposer or Lead JV Partner must possess, at a minimum, the following qualifications:

Customer Meter Data and Billing Administration Experience: at least (3) years of experience managing and storing protected electricity customer meter data and administering customer accounts, ensuring accessible, scalable access to that data by customer service and program staff, experience working with customer meter data, generating customer billing data and related reports, and preparing and providing regular reports for operations including California Independent System Operator (CAISO) and Settlement Quality Meter Data, experience providing services necessary for customer billing and payment, tracking customer usage, customer accounts receivable and payments, administering customer deposits, issuing bills, monitoring payments, issuing late payment/termination notices, , experience transferring energy and financial data through EDI (Electronic Data Interchange) functions for an energy industry client in California, preferably a Community Choice Aggregation program;

AND

Customer Care Experience: at least three (3) years of experience responding to customer inquiries, supporting customer call center, including configurable Interactive Voice Response self-service phone system as well as providing email, text, and mass mailing support for customer outreach, including managing an energy industry call center for your own business or for an energy industry client within the CAISO area, preferably a Community Choice Aggregation program OR supporting another type of client in operating a call center and responding to customer inquiries.

- B. To qualify as a **Non-Lead JV Partner** for the Agreement, the Non-Lead JV Partner(s) must possess, at a minimum, the following qualifications:

Customer Meter Data and Billing Administration Experience: at least two (2) years of experience managing and storing protected electricity customer meter data and administering customer accounts, ensuring accessible, scalable access to that data by customer service and program staff, experience working with customer meter data, generating customer billing data and related reports, and preparing and providing regular reports for operations including California Independent System Operator (CAISO) and Settlement Quality Meter Data, experience providing services necessary for customer billing and payment, tracking customer usage, customer accounts receivable and payments, administering customer deposits, issuing bills, monitoring payments, issuing late payment/termination notices, , experience transferring energy and financial data through EDI (Electronic Data Interchange) functions for an energy industry client in California, preferably a Community Choice Aggregation program;

OR

Customer Care Experience: at least two (2) years of experience responding to customer inquiries, supporting customer call center, including configurable Interactive Voice Response self-service phone system as well as providing email, text, and mass mailing support for customer outreach, including managing an energy industry call center for your own business or for an energy industry client within the CAISO area, preferably a Community Choice Aggregation program OR supporting another type of client in operating a call center and responding to customer inquiries.

5 Proposal Response Format

5.1 Proposal Submission

All proposals must be submitted online via the [SFBid website](#).

For technical or procedural questions regarding the online submittal, please contact sfbid@sfgwater.org.

5.2 Proposal Requirements and Format

Detailed proposal response requirements are listed below and on the online response form within SFBid (“Proposal Response Form”). Please refer to the SFBid website and click the “Submit Proposal” button to view and complete the full Proposal Response Form. Proposers must not use the “Make Link” or “Add Image” features in the formatted text response fields. Inclusion of links (other than email addresses) or images in the text response fields may result in rejection of a proposal. The proposal must include the following information and take the following actions:

5.2.1 Contact Information and Commitments

Provide contact information, identifying the Prime Proposer and, if a JV is responding to this RFP, identify the Lead and Non-Lead JV Partners. If available, provide the Prime Proposer’s or JV entity’s City “Bidder” or “Supplier” number. By submitting a proposal, Proposer agrees to the following commitments:

- Proposer has reviewed the Conflict of Interest section of this RFP and agrees to comply with all conflict of interest rules and restrictions;
- Proposer has the qualifications and experience to perform and complete the work described in this RFP;
- Proposer has read and agrees to comply fully with the terms and conditions of the Agreement (included as Appendix A);
- Proposer has reviewed the Limitations on Communications section of this RFP and certifies compliance with all communications instructions and restrictions;
- Proposer agrees to acknowledge and respect all SFPUC policies (see Section 2.2);
- Proposer agrees to comply fully with all applicable laws, including the laws of the City and County of San Francisco.
- Proposer warrants its proposal contains only truthful and accurate information; If submitting a voluntary SIP Proposal, Proposer agrees to keep its Social Impact Commitments offer (as specified in its SIP Proposal) open for the SFPUC’s acceptance until such time as the Agreement is finally awarded and approved as required by law unless the SFPUC rejects all proposals before award;
- If submitting a voluntary SIP Proposal, Proposer has read the SIP Rules and Regulations and agrees to fully comply with the terms and conditions of the SIP.

5.2.2 Executive Summary

Provide a maximum 2-page executive summary that:

- includes a brief overview of the proposal's principal elements;
- demonstrates an understanding of the City's goals and project objectives; and
- briefly describes the approach for carrying out the scope of services.

5.2.3 Proposer Qualifications

Proposer must provide a description and background summary of the Prime Proposer's or JV Partners' consulting firm(s), and subcontractors. The summary must include corporate qualifications, commitment, strength, and technical capabilities to fulfill all services specified and required to accomplish the work successfully.

If a JV, include a description of the organization, relationships, and defined responsibilities of all partners in the JV. Describe any previous project-specific associations of the JV Partners. The Lead JV Partner must demonstrate proven experience in managing and leading.

Proposer must clearly demonstrate that the Prime Proposer (or JV Partners), and all subcontractors meet all the minimum qualification requirements outlined in Section 4, Minimum Qualifications.

5.2.4 Reference Projects

Prime and lead JV partner must provide a description of the three most recent projects previously managed by the Proposer within the last 10 years, which must be of the type of services specified in this RFP.

Non-lead JV partner must provide a description of one recent project previously managed by the Proposer within the last 10 years, which must be of the type of services specified in this RFP.

Reference projects should also speak to Proposer's experience in performing tasks outlined in Section 3.

A Proposer may not selectively choose projects. Rather, the Proposer must submit project descriptions for the most recent projects that are relevant to the services requested in this RFP. Failure to submit the most recent, relevant projects may result in the SFPUC deeming the proposal non-responsive and/or deducting points.

If a Proposer responding to this RFP identifies an SFPUC project as a qualifying project reference, and the identified project complies with RFP reference requirements and was subject to the SFPUC's Consultant Services Performance Evaluation (CSPE) process (see Appendix I), then SFPUC staff may forward either the most recent annual CSPE or the final CSPE for the project, as appropriate, to the Technical Panel.

Each project description shall include:

- Project name;

- Project scope summary;
- Project start and completion dates;
- Project costs (prime [or JV partners] consulting fee and total project cost);
- Proposer's role and responsibilities on the project;
- Proposer's performance on delivering the project on schedule and on budget;
- Proposer staff members who worked on the project; and
- Client name, reference, and contact information.

5.2.5 Work Approach

Proposer must describe its overall work approach. Specifically address the following:

- Overall approach for meeting the goals and objectives of this RFP as outlined in the RFP;
- Approach for coordinating/managing all work activities, including coordination and communication with CleanPowerSF staff;
- Service Success Metrics, a description of the measures the Proposer will use to determine success in accomplishing the Tasks outlined in Section 3.
- A detailed description of how the Proposer intends to execute the work associated with all specified tasks in Section 3.
- Approach for monitoring expended labor hours and tracking various factors affecting task costs; include description (frequency, days after timesheet submittal) of project manager's access to reports on staff labors hours;
- Processes for internal and external notification and resolution of technical conflicts and cost/schedule variances;
- Understanding of potential project/task issues and constraints, and approach to managing project-specific challenges to complete tasks on schedule and within budget;
- Team organization, availability of individuals identified in the proposal, and proposed internal (within Proposer's team) and external (including City departments) reporting relationships;
- Location where the work is to be managed and location where each component of the work is to be performed;

5.2.6 Team Organization Chart

As instructed in the Proposal Response Form, attach an organizational chart that illustrates the team structure (include the integration/interaction with SFPUC project team staff). Note the firm name and title/role for each team member.

5.2.7 Fee Schedule

The SFPUC will compensate the Contractor for services provided under the Agreement for: (1) monthly charges per customer meter and (2) and hourly labor related cost.

A. Applicable Rates/Tasks

All proposals must provide 2024 billing rates. The Agreement will permit Contractor to escalate its 2024 billing rates only based on the annual percentage change of the Consumer Price Index for the San Francisco Bay Area for Urban Wage Earners and Clerical Workers.

A maximum billing rate of \$220/hour will be assessed for as needed work to support tasks identified in section 3.1 of this agreement.

All costs to manage and administer the services under the Agreement must be included in each firm's Fee Schedule Only individuals identified in the proposal or approved by the SFPUC Contract Manager to be added, and who are performing tasks directly related to the Agreement, may charge their time on approved task orders.

B. Rates and Markups

The Proposer's billing rates provided in the Fee Schedule will be non-negotiable during the Agreement award process and for the duration of the Agreement. If a new subconsulting firm is added during the duration of the Agreement, the new individual firm's hourly billing rate must not exceed the maximum billing rate. The maximum billing rate will also apply to all amendments to the Agreement.

The City will only approve project staff substitutions when that change in personnel is requested by the City and/or beyond the control of the Proposer. The City expects individuals listed in the Fee Schedule, and for whom résumés and qualifications have been submitted as part of the proposal, to be provided to the project team.

Markups are limited to 5% of Subconsultants' actual labor costs. Markups on ODCs or materials for either the Proposer or its Subconsultants are not allowable.

C. Other Direct Costs

ODCs shall include actual direct costs (with no markup) of expenses directly incurred in performing the work. **All ODCs must receive written pre-approval from the SFPUC Contract Manager.**

The following items will be eligible for reimbursement as ODCs:

1. Task-specific out-of-town travel as requested by the SFPUC ("out-of-town" shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, and Solano). Out-of-town travel must be non-routine.
 - a. Rental vehicle or car share: traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented.
 - b. Personal vehicle use: The SFPUC will pay Contractor on a per mile basis as established by the United States Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. Should the travel begin or end on a normal workday, the Contractor must subtract commuting mileage from total mileage to calculate reimbursable mileage. The Contractor must submit to the SFPUC

an approved mileage log and expense report with its monthly invoices.

- c. Project vehicle rental/lease cost, gasoline, tolls, and parking. The Contractor must request the project vehicle and receive pre-authorization by SFPUC staff. The SFPUC will only reimburse the business portion of the vehicle use. Vehicle mileage log and an expense report are required for consideration of reimbursement. Since auto insurance is already part of the Agreement, the SFPUC will not reimburse any additional insurance costs. Commuting to Moccasin from Contractor's temporary home is not eligible for reimbursement.
2. Specialty printing ("specialty," as used herein, shall mean large volume printing and color printing and requires prior written approval from SFPUC project staff and documentation of the written approval from the SFPUC must be included with the invoice);
3. Task-related permit fees;
4. Expedited courier services when requested by SFPUC staff; and
5. Task-specific safety equipment.

Only the ODCs listed above are eligible for reimbursement; Proposer must include any other ODCs in its fee schedule if Proposer desires compensation for such expenses. Such expenses not eligible for reimbursement include, but are not limited to:

1. All other travel expenses such as parking, bridge tolls, public transit, vehicle mileage within the nine Bay Area counties, and travel from Contractor's home office to SFPUC facilities not requested by the SFPUC;
2. Routine travel from Contractor's home office to SFPUC facilities or to Moccasin;
3. Contractor staff relocation costs;
4. Any labor charges or pass-throughs including, but not limited to, administrative and clerical staff time;
5. Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software (other than the specialty hardware or software mentioned above), communication devices, and electronic equipment;
6. All meals, including refreshments and working lunches with SFPUC staff;
7. Equipment to be used by SFPUC staff;
8. Ergonomic office equipment; and
9. Postage and courier services that are not requested by SFPUC staff.

5.2.8 Diversity, Equity, and Inclusion Submittal

Proposers may submit as a part of their proposals a copy of the company's Diversity, Equity, and Inclusion (DEI) plan or Racial Equity Plan (REP). Submission of a DEI plan or REP is voluntary. If submitted, the SFPUC will not qualitatively score the plan. However, Proposers may receive points in the evaluation process for submission of a plan (see Section 6.2, Overall Evaluation

Process). This plan is a part of a company's strategy to build and to foster diversity and create an inclusive, equitable, and sustainable culture and work environment.

The DEI submittal, if submitted, must be submitted by uploading a PDF copy of the plan in the Proposal Response Form.

5.2.9 The SFPUC SIP Program

5.2.9.1 Generally

Consistent with the SFPUC Commission's [Environmental Justice](#), [Community Benefits](#) and [Racial Justice](#) Policies, the SFPUC encourages Proposers to join the SFPUC in delivering concrete, positive benefits to communities served and/or impacted by SFPUC projects, operations, or contracts by voluntarily participating in the SFPUC Social Impact Partnership (SIP) Program. Information on the SIP Program can be found at www.sfpuc.org/social-impact.

Proposers interested in participating in the SIP Program must follow the instructions of this [Section 5.2.9](#) and the SFPUC [SIP Program Rules and Regulations](#). All capitalized terms in this Specification are as defined in the SIP Rules and Regulations.

This RFP (Solicitation) is for a Covered Contract under the SIP Program. A Proposer that wishes to participate in the Program must submit a SIP Proposal with its technical proposal. A Proposer with a compliant SIP Proposal is eligible for a bonus in the competitive evaluation.

The SIP Program is one component of the competitive process for Covered Contracts and may, or may not, be a deciding factor in determining the successful Contractor. The SFPUC will consider each SIP Program Commitment Proposal (SIP Proposal) as a factor separate from and in addition to other qualitative or quantitative scoring criteria for the Covered Contract. Following a competitive process, the SFPUC may or may not award a Covered Contract and reserves the right in all Solicitations to reject any or all proposals.

Where, and if, there are any conflicts or discrepancies between the language in this section, the SIP Proposal, and the SIP Rules and Regulations, the SIP Rules and Regulations shall prevail as the final understanding and agreement between the Proposer and the SFPUC.

5.2.9.2 SIP Proposals and Proposed Commitments

To participate in the SIP Program, a prospective Contractor (Proposer) must submit a SIP Proposal in response to this Solicitation. Proposers should provide a SIP Proposal [on the SIP Proposal Response Form, located in Appendix J](#). Participation in the SIP Program by submission of a SIP Proposal constitutes Contractor's acknowledgement and agreement that it shall comply with the SIP Rules and Regulations as may be amended during the term of a Covered Contract.

SIP Proposals must be submitted utilizing [SIP Proposal Form, provided in Appendix J](#). The SFPUC may deem any SIP Proposal not meeting this requirement nonresponsive.

A SIP Proposal may include one or more proposed commitments (Proposed Commitment). For each Proposed Commitment, Proposer shall identify:

- (A) Commitment Type and Amount,
- (B) Program Area(s),
- (C) Geographic Area(s),
- (D) Contractor's Key SIP Program Personnel,
- (E) Social Impact Work Experience,
- (F) Reasoning or Values Alignment to Selected Program Area(s),
- (G) SIP Work Approach, and
- (H) Systems, Processes and Documentation.

A. Proposed Commitment Type and Amount

Proposed Commitments for participation in the SIP Program must be in the form of:

- (1) Direct Financial Contributions that Proposer will pay directly to a Beneficiary; and/or
- (2) Volunteer Hours that Proposer will provide to support a Beneficiary.

The amount of a Proposed Commitment must be delivered as direct services and programming in support of a Program Area (see (B) below) where key performance indicators and outcomes can be reported, not toward a Beneficiary's general operating or overhead costs, fundraising events, or other non-program-based expenses. Proposed Commitments shall not include Contractor's costs associated with participation in the SIP Program, such as administrative costs, employee time, SIP Program reporting requirements, costs to deliver the Proposed Commitment, or cost of travel to/from Commitment locations. All such costs shall be borne by the Contractor at no cost to the SFPUC.

The Contractor's funding or performance of its Proposed Commitment may not be conditioned upon, tied to, or dependent on receipt of any funds from the SFPUC for the Covered Contract, including amounts held by the City in retention.

Proposers shall not include any language conditioning the delivery of their Proposed Commitments in any way. Proposed Commitments must be clear, unambiguous, and leave no room for interpretation or require any future changes, modifications, reconsideration, or reevaluation. If Proposer's SIP Proposal includes language conditioning the delivery of Contractor's Social Impact Commitments in any way, the SFPUC will deem the SIP Proposal non-responsive.

B. Program Areas

A Proposed Commitment must be performed in one or more of the following Program Area(s):

Job Exposure, Training, and Internships: Focused on building a diverse and skilled pool of workers for the twenty-first century, and may include local recruitment, case management, barrier removal, soft skills training, technical skills training via California

State-approved apprenticeship programs and community-based organizations, or building the worker pipeline to meet State and City-mandated workforce and contracting requirements.

Small Business Support: Focused on the support of small local businesses in the communities adjacent to the project, and may include training, mentoring, technical assistance, or business development, especially in the construction and professional service industries.

Public Education: Focused on strategies that promote science and engineering education and educational advancement for local disadvantaged communities through partnerships with local educational nonprofits and public schools that take into consideration the priorities of the local public school district.

Environment and Community Health: Focused on strategies to address environmental justice disparities, improve health outcomes in the community, nurture environmental stewardship, and support the continued presence and well-being of long-term residents and businesses in local communities.

C. Geographic Areas

A Proposed Commitment must be performed in the City and County of San Francisco, an area that has been or will be impacted by the SFPUC's projects, operations, and/or work associated with this Covered Contract Solicitation.

D. The Contractor's Key SIP Program Personnel

The Proposer must identify its key SIP Program personnel. The key personnel shall include a SIP Executive-in-Charge and a SIP Coordinator. The SIP Executive-in-Charge will manage the implementation of the SIP Commitments, provide oversight, and ensure that the Contractor delivers that proposed Social Impact Commitments in a transparent and accountable manner. The SIP Coordinator will organize, plan, track, and report on the progress of all Social Impact Commitments.

E. Social Impact Work Experience

A proposal must describe the Proposer's documented history and/or experience with social impact/community benefits work, including the Proposer's current community involvement and existing community relationships/partnerships related to the Geographic Area and communities associated with the Project. If a Proposer does not have documented history or experience with social impact/community benefits work, the Proposer may alternatively describe how its culture supports the importance and impact of the Proposer delivering SIP Commitments through this Project. If a Proposer has previously been awarded SFPUC contracts that have included the SIP Program, the Proposer must describe its level of success in satisfying

its SIP obligations as reflected on the SFPUC public [dashboard](#) or a more current progress update for active contracts.

F. Reasoning or Values Alignment to Selected Program Area(s).

Excellent proposals will describe the Proposer’s reasoning or values alignment that inspired the Proposer to select the Program Area(s) under which it has proposed Social Impact Commitments for this Project. Proposals will further expand on Contractor’s own mission and values, and Proposer’s alignment to the SFPUC Commission’s adopted policies including the [Environmental Justice](#) (to prevent and mitigate harm), [Community Benefits](#) (to promote positive impacts), and [Racial Justice](#) (to address systemic racism) policies and resolutions.

G. SIP Work Approach

Excellent proposals will describe the Proposer’s approach, including how the community(ies) impacted by the Project will be engaged to determine the most appropriate use of Proposer’s Social Impact Commitments, how those community(ies) will be selected, and how maximum accountability to the impacted community(ies) will be ensured, consistent with the SFPUC’s Environmental Justice, Community Benefits, and Racial Justice policies and resolutions.

H. Systems, Processes and Documentation

Excellent proposals will describe the systems, processes, and substantiating documentation (see [5.2.9.3](#) Section F for examples) that the Proposer has or will put in place that will allow the Proposer to accurately track and publicly report on the commitments, data, and unique key performance indicators associated with Proposer’s commitments.

5.2.9.3 SIP Work Approach Covered Contract SIP Program Requirements

A. SOCIAL IMPACT COMMITMENTS

A Covered Contract shall incorporate the Contractor’s Proposed Commitments from its SIP Proposal as Social Impact Commitments, and the Contractor shall be obligated to perform the Commitments during the term of the Covered Contract.

The Contractor’s obligation to perform a Social Impact Commitment is separate from, and in addition to, any other regulatory or legal requirements under the Covered Contract, including but not limited to, the requirements of the Local Business Enterprise program, Local Hire, First Source Hiring, Project Labor Agreement, or any other requirements of the City or other regulatory entity.

The Contractor's provision of Social Impact Commitments does not entitle it to additional work beyond that specified within the Covered Contract.

The Contractor shall indemnify and defend the City and any of its officers or employees from all damages, costs, or expenses in law or equity, or claims for same, that may arise from the performance of Social Impact Commitments. The Contractor shall bear sole responsibility and liability, if any, for any breach of the SIP Program provisions of its Covered Contract, the SIP Rules and Regulations, or San Francisco Administrative Code 21F.

B. SUBCONTRACTORS

Subcontractors may participate in the delivery of Social Impact Commitments. The Contractor, however, shall remain solely responsible for the performance of such Commitments. A Contractor may not condition a subcontract on participation in the SIP Program and cannot pass through the contractual obligation (or the cost) to perform Social Impact Commitment to a subcontractor, subconsultant, or vendor.

The Contractor may retain entities or individuals to assist in implementing its SIP Commitments so long as any cost incurred to pay those entities or individuals is not charged or otherwise passed through to the SFPUC.

C. TERM OF COMMITMENT DELIVERY AND COMPLETION

The Contractor's Social Impact Commitment must be fulfilled during the term of the Covered Contract, or during the term specified in the Covered Contract for the delivery of Commitments. Actions taken by the Contractor before the term of the Covered Contract begins or after it ends may not count towards the fulfillment of the Social Impact Commitment for that contract.

When the Contractor has demonstrated and the SFPUC has confirmed completion of each SIP Commitment, all SIP Program requirements under these Rules and Regulations and the SIP provisions of the Covered Contract shall be deemed satisfied. If Social Impact Commitments have been fulfilled and all of the required reporting and documentation has been submitted, the Contractor may request a closeout letter from the SFPUC. A closeout letter shall not excuse performance of additional Social Impact Commitments if the Covered Contract is increased as provided under Rule 4.4 of the SIP Rules and Regulations regarding Modifications.

D. MODIFICATIONS

1. Contract Increases

When a SFPUC Covered Contract modification results in an increase of 10% or more of the original Covered Contract amount, the Contractor shall propose a proportional increase to its Social Impact Commitment(s) for the Covered Contract. Such increase shall be proportional to the increase in contract amount under the modification and shall not increase costs to the SFPUC. Approval of any such modification will be contingent on confirmation by the SFPUC that the Social Impact Commitment value is proportionate. Contractor shall be obligated to deliver the proportionally increased SIP Commitment(s).

E. SIP WORK PLANS

Unless otherwise specified in a Solicitation or Covered Contract, the Contractor must submit a proposed SIP Work Plan within 60 days of issuance of a **Notice of Contract Award**. The SFPUC and the Contractor will then meet and confer on the proposed SIP Work Plan and the SIP Program requirements. The SFPUC will use the final SIP Work Plan to assess progress on Social Impact Commitment delivery regularly throughout the term of the Covered Contract.

A SIP Work Plan shall include the following detailed information:

1. Social Impact Commitment Information

The Contractor shall identify the Commitment type and amount, the Beneficiary (see Rules 1.0 and 2.3), and the Program Area for each Social Impact Commitment and confirm that Contractor will perform its SIP obligations in the designated Geographic Area.

2. Performance Benchmark Information

The Contractor shall identify key benchmarks that align with the underlying technical Covered Contract schedule. Specifically, SIP Work Plan benchmarks shall detail how the Contractor plans to be on track with Commitment delivery at 25%, 50%, 75%, and 100% of Covered Contract completion (defined as being within 10% of the progress and completion of the underlying contractual term).

3. Beneficiary Information

In its SIP Work Plan (and not in its SIP Proposal), the Contractor shall identify Beneficiary(ies) for each Social Impact Commitment by name and address.

Contractors must independently verify the following information about each Beneficiary:

1. Eligibility: (1) Confirmation of current 501(c)3 status by requesting a link to the organization's profile on the State Registry of Charitable Trusts and verifying that registry status is "current" or by receiving a copy of official State documentation providing current nonprofit status; or (2) confirmation of a public school through the California Department of Education website: <https://www.cde.ca.gov/schooldirectory>.
2. Program Area and Geographic Area: The Beneficiary provides services within the identified Program Area(s) and Geographic Area(s).
3. Independence: The Beneficiary is not owned, operated, or controlled by the Contractor or its subcontractor(s) or any respective officer or employee or Relative of an officer or employee.

The following are not eligible Beneficiaries: any (1) City department, office, board, commission, or other entity; (2) City official or employee or Relative of a City official or employee, unless the resulting benefit is incidental to and not unique to the City official or employee or Relative, but rather benefits the general public or particular community that is the focus or target of the Social Impact Commitment; or (3) entity subject to an order of debarment or suspension under San Francisco Administrative Code Chapter 28.

A Beneficiary must be independent of the Contractor and its subcontractor(s) (at any tier) and their respective officers and employees. No Contractor or subcontractor officer or employee or Relative of an officer or employee may own, control, or manage a Beneficiary.

The SIP Work Plan shall obligate the Contractor to enter into memoranda of understanding with all Beneficiary(ies) that will receive \$10,000 or more in Social Impact Commitments. Each memorandum must specify the purpose of the contribution and require the Beneficiary to report to the Contractor on key performance indicators for the Social Impact Commitment.

F. REPORTING

Contractors must submit regular, bi-annual, SIP Program performance reports to the SFPUC. Reports must include a statement of compliance signed by an authorized representative of the Contractor indicating that the report is accurate and complete.

Contractors shall submit all reports, required documentation, and details regarding key performance indicators to the SFPUC via the online portal: www.sfpuc.org/SIPreporting.

Substantiating Documentation. Further, Contractors must submit documentation with its reports to substantiate that it delivered the Social Impact Commitments and any funds or volunteer hours associated therewith (a non-exhaustive, illustrative list of examples of substantiating documentation includes: timesheets, proof of funds transfer, sign-in sheets for events and trainings, formal agreement documents, agendas and presentations from meetings, and statements of activities).

SFPUC will not accept reports submitted without substantiating documentation.

Contractors must complete reporting at the end of each reporting period, including any period in which there are no activities. Failing to report and/or no response by the specified deadlines will be considered non-compliance and subject the Contractor to corrective action (see Rule 5 of the SIP Rules and Regulations regarding Enforcement).

The biannual reporting periods are as follows:

Q1/Q2 Biannual Report for Social Impact Commitments delivered between July 1 to December 31, and all required documentation. Reporting deadline: January 31.

Q3/Q4 Biannual Report for Social Impact Commitments delivered between January 1 to June 30, and all required documentation. Reporting deadline: July 31.

Contractors will receive reminder emails from the SFPUC leading up to the biannual reporting deadlines, and after submission will receive a notification of receipt. Non-receipt of a reminder email will not excuse Contractor from its SIP Commitment obligations.

The SFPUC will review all submitted reports and supporting documentation for completion and accuracy, and will contact Contractors regarding any missing information or questions regarding their submissions.

Contractors must notify the SFPUC of any staffing changes related to the Contractor's SIP Executive in Charge and the SIP Coordinator within 30 days of a staffing change.

G. MONITORING

All Contractors shall cooperate fully with the SFPUC in monitoring and compliance activities regarding the Covered Contract.

The SFPUC will regularly monitor progress made on each SIP Covered Contract to ensure the delivery of Commitments are on track and within 10% of the progress and completion of the underlying contractual term.

SFPUC shall provide Contractors with biannual summaries of Commitment delivery to date, following each reporting period deadline.

Contractors should confirm on the public [dashboard](#) that their performance and progress towards satisfying their Social Impact Commitments has been recorded accurately following bi-annual reporting.

SFPUC shall issue a report for each Covered Contract before final payment is issued to confirm compliance with the Social Impact Commitments and contractual requirements.

The SFPUC reserves the right to verify documentation at any time, including contacting Beneficiaries to confirm receipt of Commitments.

5.2.10 CMD Forms

All proposals must include the completed CMD forms from CMD Attachment **2** (v. 7/1/2022). Attach the completed CMD forms included in Appendix C: Form 2A, Form 2B, Form 3, Form 4 (if applicable), and Form 5.

5.2.11 Additional Attachments: City Requirements Forms

All proposals must include the following:

1. Other Required City Forms: Attach the completed Minimum Compensation Ordinance (MCO) Declaration, Health Care Accountability Ordinance (HCAO) Declaration, and First Source Hiring Program (FSHP) Agreement included in Appendices E, F, and G, respectively. See Section 10, Additional City Requirements, for more information.
2. Release of Liability and Waiver, included in Appendix H.

6 Evaluation and Selection Criteria

This section describes the process for analyzing and evaluating proposals. SFPUC and CMD staff first perform an initial review of proposals as described in Section 6.1 below.

6.1 Initial Review

SFPUC and CMD staff will review each proposal for initial determinations on responsiveness. Elements reviewed will include, without limitation: proposal completeness, compliance with format requirements, compliance with minimum qualification requirements, verifiable references, compliance with the Chapter 14B requirements, and responsiveness to the material terms and conditions of the Agreement (included as Appendix A).

The SFPUC will not score proposals during the initial review. This initial review will provide a pass/fail determination as to whether a proposal meets the threshold requirements described above. The SFPUC will deem non-responsive any proposal that fails to meet these requirements. The City reserves the right to request clarification from Proposers prior to rejecting a proposal for failure to meet the initial review requirements. The SFPUC will limit clarifications to exchanges between the City and a Proposer for the purpose of clarifying certain aspects of the proposal. The City will not provide a Proposer the opportunity to revise or modify its proposal.

Proposals that pass this initial review process will proceed to the overall evaluation process described in Section 6.2 below. The SFPUC will not include any proposal deemed non-responsive in the overall evaluation process.

6.2 Overall Evaluation Process

The evaluation process will consist of the below phases with the following allocation of points:

Written Proposal	895
DEI Submittal	5
Fee Schedule	100
TOTAL	1000
SIP Submittal (potential bonus points)	50
TOTAL with SIP Bonus Points	1050

The maximum total score for the overall evaluation process will be **1000 points** plus bonus points. The SFPUC may award bonus points up to a maximum of 5% of the total points available.

The assigned CMD Contract Compliance Officer will assess proposal compliance with the Chapter 14B requirements and assign a rating bonus at each eligible evaluation stage, if applicable.

The SFPUC will distribute responsive proposals that meet all of the minimum qualification requirements to the Technical Panel for evaluation. The Technical Panel will be comprised of individuals who are knowledgeable on the subject matter, and may include staff from the SFPUC, other City agencies, and/or other utilities or other public entities. A separate panel (“SIP Panel”)

will evaluate any voluntary SIP Proposals (see Section 6.2.4. The SFPUC will not include staff closely involved with the preparation of this RFP and the development of the scope of services on any panel.

Proposers must obtain a minimum score of 360 points which is equivalent to 60% on their written proposal (first phase of the evaluation process). A score greater than 360 points or 60% on the written proposal will not automatically guarantee an invitation to the second phase of the evaluation process. Only the top four ranked Proposers will be short-listed to continue on with oral interviews.

6.2.1 Technical Written Proposal Evaluation

The Technical Panel will evaluate and score the technical written proposals using the following point scale:

EVALUATION CRITERIA	RFP SECTION(S)	POINTS
Proposer Qualifications	4.1, 4.2, 5.2.1, 5.2.3	300
Reference Projects	5.2.4	70
Work Approach	5.2.5, 5.2.6	450
Team Organizational Chart	5.2.7	75
TOTAL POINTS		895

The assigned CMD Contract Compliance Officer will assign a rating bonus to the written proposal score, if applicable.

The SFPUC will tabulate the technical written proposal scores, or CMD-adjusted technical written proposal scores (if applicable) and rank the Proposers starting with the Proposer receiving the highest score, then continuing with the Proposer receiving the second highest score, and so on.

6.2.2 DEI Submittal Evaluation

If submitted, the SFPUC will not qualitatively score the DEI plan. However, Proposers will receive points in the evaluation process for submission of a plan (see Section 5.2.10, Diversity, Equity, and Inclusion Submittal, and Section 6.2, Overall Evaluation Process).

6.2.3 Fee Schedule Evaluation

Proposer shall provide a detailed Fee Schedule (to be completed by Proposer and attached as Exhibit C). The Fee Schedule must be consistent with the City's goals as described in this RFP, and must address the following specific items:

- Customer Service Costs.

1. Proposers must separately identify prices for billing and data management and exchange, and customer communications systems, and specify any termination or transfer payments due if services are terminated by the City prior to the end of any contract term; and
2. The Proposer with the lowest overall cost proposal will receive the maximum available points (100 points) for their Fee Schedule. All other Proposers will receive a proportionate share of the maximum available points based on how their Fee Schedule compares with the lowest overall Fee Schedule.

6.2.4 SIP Evaluation and Scoring Process

6.2.4.1 Review for Compliant SIP Proposals

Proposers that wish to participate in the SIP Program must provide a SIP Proposal **on the SIP Proposal Response Form, located in Appendix J**. Participation in the SIP Program by submission of a SIP Proposal constitutes Contractor's acknowledgement and agreement that it shall comply with the SIP Rules and Regulations as may be amended during the term of a Covered Contract. If a Proposer does not follow these submission requirements, SFPUC may deem such Proposal non-responsive.

SFPUC SIP staff will confirm that the Proposed Commitment type and amount conform to the requirements of this Covered Contract's Solicitation; that each Proposed Commitment is within a Program Area; that each Proposed Commitment is within the Geographic Area specified in the Solicitation; and that a SIP Executive in Charge and a SIP Coordinator are identified (compliant Proposed Commitment). Only a compliant Proposed Commitment is eligible for evaluation and application of the bonus. SFPUC Staff, acting as a selection panel, will assign a Commitment value to each compliant Proposed Commitment, calculated as total Direct Financial Contributions plus total Volunteer Hours (at a rate of \$150/hour). SFPUC will assign a total Commitment value to the SIP Proposal.

SFPUC will not include non-compliant Proposed Commitments or portions of Proposed Commitments in the evaluation or the calculation of Commitment value. Notwithstanding, the SFPUC reserves the right in its sole discretion to waive nonmaterial defects in a SIP Proposal.

Proposers shall not add any language conditioning the delivery of its Social Impact Commitments. Proposed SIP Commitments unequivocally bind the selected Contractor to its Social Impact Commitments. If a Proposer includes language conditioning delivery of its Social Impact Commitments on its SIP Proposal Form, SFPUC will deem the Proposal non-compliant, and Proposer will not be eligible to receive any SIP bonus points.

6.2.4.2 Evaluation Panel

To evaluate each Proposer's response to the criteria set forth in paragraphs 5.2.9.2 E-H above, the SFPUC will assemble an evaluation panel. The evaluation panel will score each Proposal's responses to the Evaluation Criteria with bonus points awarded as described below.

6.2.4.3 Application of Bonus

The SIP Bonus for this procurement will be up 5% of the total points allocated to the underlying technical portion of the Solicitation. Of this 5%, the SFUPC will allocate:

- up to 3% for a Proposal's **Commitment value**, and
- up to 2% based on the evaluation panel's scores on Proposal's responses to the specified **Evaluation Criteria**.

Commitment Value. The SIP Proposal with the total highest Commitment value will receive the maximum available portion of the SIP Bonus points for Commitment value. SIP Proposals with lower total Commitment values will receive a Bonus prorated in comparison to the Proposal with the highest Commitment value.

For example:

SIP Proposals Submitted By 3 Proposers (A, B, and C)	Proposer A: Proposes 3,000 Volunteer Hours and \$550,000 in Direct Financial Contributions	Proposer B: Proposes \$500,000 in Direct Financial Contributions	Proposer C: No SIP Proposal Submitted
Calculation of SIP Commitment Value	3,000 Hours X \$150/Hour = \$450,000 Value + \$550,000 Direct Financial Contributions Value	\$500,000 Direct Financial Contributions Value	0 Volunteer Hours + \$0 Financial Contributions
Total Value of Proposed SIP Commitments	\$1,000,000	\$500,000	\$0
Pro-Rated SIP Bonus (up to maximum 3% of the total points allocated to the underlying technical portion of the Solicitation)	3% of the total points allocated to the technical portion of the Solicitation	1.5% of the total points allocated to the technical portion of the Solicitation	0% of the total points allocated to the technical portion of the Solicitation
Using Hypothetical Scenario Where 100 Total Points Are	3	1.5	0

Allocated to the Underlying Technical Portion of the Solicitation, Number of SIP Bonus Points that Would be Added to Each Proposer's Underlying Technical Score (Which is Separately Evaluated)			
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Evaluation Criteria. For the Evaluation Criteria described in paragraphs 5.2.9.2.E-H, the bonus score points for Evaluation Criteria will be up to 2% of the total 5% allocated to SIP. The up to 2% bonus points will be allocated amongst the Evaluation Criteria (described more fully in paragraphs 5.2.9.2.E-H) as follows:

1. Social Impact Work Experience – 0.75%
2. Alignment with Specified Program Area(s) and/or Geographic Area – 0.25%
3. Approach – 0.50%
4. Systems, Processes and Documentation – 0.50%

6.3 Final Scoring

The SFPUC will tabulate the evaluation scores for the technical written proposal, DEI submittal, Fee Schedule and any SIP bonus points, including any applicable rating bonuses and then rank Proposers, starting with the Proposer receiving the highest total score, then continuing with the Proposer receiving the second-highest total score, and so on. The SFPUC will identify the Proposer with the highest total score as the highest-ranked Proposer eligible to proceed with the award of an Agreement.

7 Award of an Agreement

7.1 Standard Agreement Language

By submitting a proposal, Proposer acknowledges that it has read, understands, and agrees, if selected, to enter into the City's Agreement as set forth in Appendix A, without changes to the Agreement terms and conditions. The SFPUC will not negotiate the standard terms of the Agreement. By submitting its proposal, Proposer accepts the standard terms of the Agreement and will not seek to propose negotiation of any of its terms.

7.2 Agreement Preparation

The SFPUC, at its sole discretion, may invite the highest-ranked Proposer to negotiate the proposed billing rates, and staffing listed in the submitted OPS. The SFPUC reserves the right to proceed to negotiation with the next highest-ranked Proposer if the SFPUC does not reach an agreement with that Proposer.

The SFPUC General Manager will make a recommendation to the SFPUC Commission for award of the Agreement to the highest-ranked Proposer. The Agreement may be subject to approval by the BOS pursuant to San Francisco Charter Section 9.1118. Failure by the Proposer to obtain compliance with City requirements and execute an Agreement within two weeks of the date of the BOS's approval of the SFPUC Commission's authorization to execute the Agreement may result in the SFPUC General Manager's executing an Agreement with the next highest-ranked Proposer. The SFPUC, in its sole discretion, may select another Proposer and may proceed against the original Contractor for damages.

The SFPUC will issue a Notice of Contract Award after the Contractor obtains all necessary City approvals, submits required documents, executes the Agreement, and the City Controller certifies the Agreement.

7.3 Agreement Administration

The SFPUC may direct Contractor to perform work in phases. The SFPUC will determine the work to be conducted under each phase and authorize the start of each phase in accordance with the overall agreed upon project schedule.

The City strictly prohibits the Contractor from commencing work under the Agreement until the SFPUC issues a written Notice to Proceed (NTP). The City shall not be liable for payment for any work performed by the Contractor prior to the City's issuance of an NTP.

In accordance with San Francisco Administrative Code Chapter 6, no proposal is accepted and no contract in excess of \$200,000 is awarded by the City until such time as the SFPUC General Manager recommends the contract award and the SFPUC Commission then adopts a resolution approving the contract, and if required, Board of Supervisor approval is obtained.

8 Terms and Conditions

8.1 Errors and Omissions in RFP

Proposers are responsible for reviewing all portions of this RFP, including all appendices. Proposers must notify the SFPUC promptly, in writing, upon discovery of any ambiguity, discrepancy, omission, or other error in the RFP. Modifications and clarifications will be made by addenda as specified in Section 8.3 below. The City is not obligated to issue addenda in response to any request submitted after the Deadline for Proposers to Submit Questions.

8.2 Inquiries Regarding RFP

All requests for information concerning the RFP, whether submitted before or after the pre-submittal conference, must be submitted in writing via the [SFBid website](#). SFPUC will memorialize any substantive replies in written addenda to be made part of this RFP. SFPUC will post all addenda on the SFBid website. This RFP will only be governed by information provided through written addenda. SFPUC will not accept any questions or requests for interpretation, with the exception of CMD or City contracting inquiries, after the Deadline for Proposers to Submit Questions.

If any new and/or substantive information is provided in response to questions raised at the pre-submittal conference, it will be memorialized in a written addendum to this RFP and posted on the SFBid website.

For questions concerning CMD certification requirements for equal benefits, Proposers should refer to the CMD website at <https://sf.gov/departments/contract-monitoring-division>.

Direct all inquiries regarding business tax registration procedures to the Tax Collector's Office at (415) 554-4400.

8.3 Interpretation and Addenda/Change Notices

Any interpretations of, or change in, the RFP will be made by addendum and shall become a part of the RFP and of any Agreement awarded. SFPUC will post change notices in the form of addenda on the [SFBid website](#).

The SFPUC will make reasonable efforts to post in a timely manner any modifications to the RFP on the SFBid website. Notwithstanding this provision, the Proposer shall be responsible for ensuring that its proposal reflects any and all addenda posted by the SFPUC prior to the proposal submission deadline regardless of when the proposal is submitted. Therefore, the City recommends that the Proposer check the SFBid website before submitting its proposal to determine if the Proposer has read all posted addenda. The SFPUC will not be responsible for any other explanation or interpretation.

8.4 Objections to RFP Terms

Should a prospective Proposer object on any ground to any provision or legal requirement set forth in the RFP (including all appendices and all addenda), including but not limited to objections based on allegations that: (i) the RFP is unlawful in whole or in part; (ii) one or more of the requirements of the RFP is onerous, unfair or unclear; (iii) the structure of the RFP does not

provide a correct or optimal process for the solicitation of the Services; (iv) the RFP contains one or more ambiguity, conflict, discrepancy or other error; or (v) the RFP unnecessarily precludes alternative solutions to the Services or project at issue, the prospective Proposer must provide timely written notice of objection as set forth below.

A. An objection must be in writing and must be received by the City no later than 5:00 p.m. on the 10th working date prior to the deadline for proposal submittal (as that deadline may be adjusted by addenda). If an objection is mailed, the prospective Proposer bears the risk of non-delivery within the required time period. Proposers must transmit objections by a means that will objectively establish the date and time of receipt by the City. The SFPUC will not consider any objections or notices of objections delivered orally (e.g., by telephone).

B. Proposers must deliver any objections to: cab@sfwater.org and shale@sfwater.org

San Francisco Public Utilities Commission

Contract Administration Bureau

RE: PUC.PRO.0297 SFPUC Customer Administrative Services Community Choice Aggregation

C. Any objection shall state the basis for the objection, refer to the specific requirement or portion of the RFP at issue, and shall describe the modification to the RFP sought by the prospective Proposer. The objection shall also include the name, address, telephone number, and email address of the person representing the prospective Proposer.

D. The City, at its discretion, may make a determination regarding an objection without requesting further documents or information from the prospective Proposer that submitted the objection. Accordingly, the initial objection must include all grounds of objection and all supporting documentation or evidence reasonably available to the prospective Proposer at the time the objection is submitted. If the prospective Proposer later raises new grounds or evidence that were not included in the initial objection, but which could have been raised at that time, then the City may decide not to consider such new grounds or new evidence.

E. Upon receipt of a timely and proper objection, the City will review the objection and conduct an investigation as it deems appropriate. As part of its investigation, the City may consider information provided by sources other than prospective Proposer. At the completion of its investigation, the City will provide a written determination to the prospective Proposer that submitted the objection. If required, the City may extend the proposal submittal deadline to allow sufficient time to review and investigate the objection and issue addenda to incorporate any necessary changes to the RFP.

F. The SFPUC will not consider objections not received within the time and manner specified. A Proposer's failure to provide the City with a written objection as specified above, on or before the deadline specified above, shall constitute a complete and irrevocable waiver of the ground(s) of objection and forfeiture of the Proposer's right to raise such ground(s) of objection later in the procurement process, in a Government Code Claim, or in other legal proceedings.

- G. A Proposer may not rely on an objection submitted by another Proposer, but must timely pursue its own objection.

8.5 Reserved (Signature Requirements)

8.6 Term of Proposal

By submitting a proposal for consideration, the Proposer agrees that: (1) the proposed services and prices constitute an offer that is irrevocable for 120 calendar days from the proposal due date, and that the City may accept the offer at any time after submission through the end of the 120th calendar day following the deadline for submission of proposals; and (2) the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

8.7 Revision of Proposal

Notwithstanding the forgoing, a Proposer may withdraw or revise a proposal on the Proposer's own initiative at any time before the deadline for submission of proposals. The Proposer must submit the revised proposal in the same manner as the original proposal. A revised proposal must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised proposal or the commencement of a revision process extend the proposal due date for any Proposer.

A Proposer may withdraw its proposal prior to the proposal submission deadline by following the prompts on the [SFBid website](#). Once withdrawn, a Proposer may submit a revised proposal through SFBid ahead of the proposal deadline.

At any time during the proposal evaluation process, the SFPUC may require a Proposer to provide oral or written clarification of its proposal. The SFPUC reserves the right to make an award without receiving or accepting any clarifications of proposals received.

8.8 Errors and Omissions in Proposal

Failure by the SFPUC to object to an error, omission, or deviation in the proposal will in no way modify the RFP or excuse the Proposer from full compliance with the specifications of the RFP or any Agreement awarded pursuant to the RFP.

8.9 Financial Responsibility

The SFPUC accepts no financial responsibility for any costs incurred by a Proposer in either responding to this RFP, participating in oral presentations, or negotiating an Agreement with the SFPUC. The proposals in response to the RFP will become the property of the SFPUC and may be used by the SFPUC in any way it deems appropriate.

8.10 Proposer's Obligations Under the Campaign Reform Ordinance

Proposers must comply with Section 1.126 of the San Francisco Campaign and Governmental Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective

officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations for such contract until (1) the termination of negotiations for such contract; or (2) three months have elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

If a Proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the Proposer is prohibited from making contributions to:

- The officer's re-election campaign;
- A candidate for that officer's office; and
- A committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a Proposer approaches any City officer or employee about a particular contract, or a City officer or employee initiates communication with a potential Proposer about a contract. The negotiation period ends when a contract is awarded or not awarded to the Proposer. Examples of initial contacts include: (i) a vendor contacts a City officer or employee to promote himself or herself as a candidate for a contract; and (ii) a City officer or employee contacts a Proposer to propose that the Proposer apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a RFP, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

1. Criminal: Any person who knowingly or willfully violates Section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
2. Civil: Any person who intentionally or negligently violates Section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
3. Administrative: Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, Proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

8.11 Sunshine Ordinance

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

8.12 Public Access to Meetings and Records

If a Proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City-funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, the Proposer must comply with Chapter 12L. The Proposer must include in its proposal: (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Proposer's meetings and records, and (2) a summary of all complaints concerning the Proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the Proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in Proposer's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

8.13 Reservations of Rights by the City

The issuance of this RFP does not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right at any time to:

1. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all proposals;
3. Award fewer than the anticipated number of Agreements;
4. Reissue an RFP;
5. Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;
6. Procure any materials, equipment or services specified in this RFP by any other means; or
7. Determine that no project will be pursued.

8.14 No Waiver

No waiver by the City of any provision of this RFP shall be implied from any failure by the City to recognize or take action on account of any failure by a Proposer to observe any provision of this RFP.

9 CMD Requirements

9.1 Chapter 14B LBE Subcontracting Participation and Good Faith Efforts Requirements

The requirements of the Local Business Enterprise Utilization 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”) shall apply to this RFP.

9.1.1 LBE Subcontracting Participation Requirements

The LBE subcontracting participation requirement is waived for this contract.

Proposer must comply with all requirements of the LBE Ordinance and CMD Attachment 2 (v. 7/1/2022). Please read CMD Attachment 2 carefully in its entirety.

9.1.2 LBE Rating Bonus

The City will deem non-responsive proposals that fail to comply with the material requirements of San Francisco Administrative Code Sections 14B.8 and 14B.9, CMD Attachment 2 LBE Prime/JV Participation

LBE Rating Bonus

The following rating bonus will be in effect for the award of the Agreement for any Proposers CMD has certified as LBEs.

A. General

CMD-certified San Francisco Micro-LBEs, Small-LBEs, and SBA-LBEs, including certified non-profit organizations, are eligible for an LBE rating bonus (as applicable under Section 14B.7 of the LBE Ordinance) if the LBE is CMD-certified in the type of work that is specified for the Proposer by the SFPUC.

The assigned CMD Contract Compliance Officer will apply these rating bonuses to each evaluation stage of the selection process, as applicable. The rating bonus provided under B, D and E of this section can be combined with each other except for the Mentor-Protégé rating bonus. Proposer may receive up to a maximum rating bonus of 13% depending on the particular application listed below. A Proposer may only claim one rating bonus under each of the following subsections:

- Standard rating bonus

B. Standard Rating Bonus

Application of the standard rating bonus shall be as follows:

1. The rating bonus for a JV with LBE participation is as follows:
 - a. 10% for each JV among Small-LBE and/or Micro-LBE Proposers.

- b. 5% for each JV which includes at least 35% (but less than 40%) participation by Small-LBE and/or Micro-LBE Proposers.
- c. 7.5% for each JV that includes 40% or more in participation by Small-LBE and/or Micro-LBE Proposers.

Pursuant to Section 14B.7(F) of the LBE Ordinance, SBA-LBEs are not eligible for the rating bonus when joint venturing with a non-LBE firm. However, if the SBA-LBE joint ventures with a Micro-LBE or a Small-LBE, the JV will be entitled to the JV rating bonus only to the extent of the Micro-LBE or Small-LBE participation.

Each Small-LBE and/or Micro-LBE JV partner must be responsible for a clearly defined portion of the work to be performed. The rating bonus is applied only when the Small-LBE and/or Micro-LBE JV partner has sufficient skill, experience, and financial capacity to perform the portion of the work identified for the Small-LBE and/or Micro-LBE JV partner. This portion must be set forth in detail separately from the work to be performed by the non-LBE JV partner. Each JV partner must meet the minimum qualifications listed for the Prime Proposer or JV partner as outlined in this RFP. Each JV partner must be listed to perform prime level work and each JV partner must possess the license required by the RFP (if applicable). The LBE JV partner(s) must be CMD-certified in the area that they are listed to perform in order to be eligible for the rating bonus. The JV partners must be jointly responsible for the overall project management, control, and compliance with Chapter 14B requirements.

Contracts with an Estimate Cost in Excess of \$10,000,000 and Less Than or Equal to \$20,000,000:

A 2% rating bonus will apply to any proposal submitted by a Small-LBE, Micro-LBE, or SBA-LBE.

The rating bonus applies at each phase of the selection process.

LBE JV ratings bonuses do not apply for contracts estimated by the SFPUC to exceed \$10 million.

9.1.3 CMD Forms

All proposals must include the following CMD forms contained in CMD Attachment Form 2A – CMD Contract Participation Form

1. Form 3 – CMD Compliance Affidavit
2. Form 4 – CMD Joint Venture Form (if applicable)
3. Form 5 – CMD Employment Form

Failure to complete, sign, and submit each of the required CMD forms with the proposal may result in the proposal being deemed non-responsive and rejected. Direct all inquiries concerning the Chapter 14B requirements to Adriana Duran, the CMD Contract Compliance Officer for the SFPUC, at (415) 554-3104 or Adriana.duran@sfgov.org.

The City strongly encourages proposals from qualified LBEs. If you have any questions concerning becoming certified as an LBE, please call (415) 581-2310 or visit the CMD website at

9.2 Labor and Employment Code Article 131 Requirements (Equal Benefits)

Effective June 1, 1997, Chapter 12B of the San Francisco Administrative Code was amended to prohibit the City from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. On October 24, 2023, the Board of Supervisors passed an ordinance establishing a new Labor and Employment Code to better organize San Francisco's various employment and labor laws. Through this ordinance, which is operative as of January 4, 2024, a number of the City's contracting provisions have been redesignated in a new Labor and Employment Code. However, this redesignation did not change the substance or meaning of the provisions; it has simply changed where the provisions can be found and how they are referred to. For example, the Equal Benefits Ordinance, formerly 12B, is now Article 131 of the Labor and Employment Code. However, substantively, it is not difference than when it was 12B. Proposers should establish compliance with Article 131 before execution of the Agreement if not already compliant. Important: 131/12B Declarations must be submitted online through the City's supplier portal. CMD has developed rules of procedure and various resource materials explaining the Equal Benefits Program. These materials are available by calling the CMD Equal Benefits Unit at (415) 581-2310 or by visiting the CMD website at <https://sf.gov/departments/contract-monitoring-division>.

The selected Proposer must be in compliance with the Equal Benefits Provisions of Article 131 of the San Francisco Labor and Employment Code either at the time of contract award or within two weeks of the date of the SFPUC Commission's authorization to award; failure of the selected Proposer to obtain compliance certification from CMD may, in the SFPUC General Manager's sole discretion, result in award of the Agreement to the next highest-ranked Proposer or in re-advertising and re-selecting contractors at the discretion of the City.

See Chapter 12B Equal Benefits Complete Compliance Guide, included as Appendix D, for more information. For questions concerning the Article 131/Chapter 12B Equal Benefits Compliance, call the CMD Equal Benefits Unit at (415) 581-2310.

10 Additional City Requirements

10.1 Insurance Requirements

Without in any way limiting Proposer's liability pursuant to the "Indemnification" section of the Agreement (see Appendix A), Contractor will be required to maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage:

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

Technology Errors and Omissions Liability coverage, with limits of \$20,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the Agreement and shall also provide coverage for the following risks:

Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

5. **Cyber and Privacy Insurance**, with limits of not less than \$20,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

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

1. Name as Additional Insured the City and County of San Francisco, the San Francisco Public Utilities Commission, and their respective officers, agents and employees; and

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

Regarding Workers' Compensation, Proposer hereby agrees to waive subrogation, which any insurer of Proposer may acquire from Proposer by virtue of the payment of any loss. Proposer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Proposer, its employees, agents, and subcontractors.

All policies shall provide 30 days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section of the Agreement.

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

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

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

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

Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder. If a subcontractor will be used to complete any portion of the agreement, the Proposer shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, the San Francisco Public Utilities Commission, and their respective officers, agents, and employees and the Proposer listed as additional insureds.

10.2 Standard Agreement

The Contractor will be required to enter into a contract, substantially in the form of the Agreement for Professional Services, attached hereto as Appendix A. Submission of a proposal shall indicate Proposer's agreement to all terms of the Agreement.

Proposers are urged to pay special attention to the requirements of San Francisco Labor and Employment Code Articles 131 and 132, Nondiscrimination in Contracts and Benefits; the Minimum Compensation Ordinance; the Health Care Accountability Ordinance; the First Source Hiring Program; and applicable conflict of interest laws, as specified in RFP Sections 10.3, 10.4, 10.5, 10.6, and 10.9, and Section 12, respectively, as well as Article 11 in the Agreement.

10.3 Nondiscrimination in Contracts and Benefits

As outlined above, the Contractor will be required to agree to comply fully with and be bound by the provisions of Articles 131 and 132 of the San Francisco Labor and Employment Code (formerly Administrative Code Chapters 12B and 12C). Generally, Article 131 prohibits the City from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Article 132 requires nondiscrimination in contracts in public accommodation. Additional information on Articles 131 and 132 (formerly Administrative Code Chapters 12B and 12C) is available on the CMD website at <https://sf.gov/departments/contract-monitoring-division>.

10.4 Minimum Compensation Ordinance for Employees

The Contractor will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Labor and Employment Code Article 111 (formerly Administrative Code Chapter 12P). Generally, this ordinance requires contractors to provide employees covered by the ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements.

Additional information regarding the MCO, including the amount of hourly gross compensation currently required under the MCO, is available on the City website at www.sfgov.org/olse/mco. Note that the hourly gross compensation rate may increase on January 1st of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract. See Article 11 in the Agreement for requirements.

10.5 Health Care Accountability Ordinance

The Contractor will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Labor and Employment Code Article 121 (formerly Administrative Code Chapter 12Q). Contractors should consult the Labor and Employment Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at www.sfgov.org/olse/hcao.

10.6 First Source Hiring Program

If the contract is for more than \$50,000, the First Source Hiring Program (FSHP) (San Francisco Administrative Code Chapter 83) may apply. Generally, this ordinance requires contractors to notify the FSHP 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. Additional information regarding the FSHP is available on the web at <http://oewd.org/first-source> and from the First Source Hiring Administrator, (415) 701-4848.

10.7 City Vendor and Subcontractor Registration

Contractor must become an “Approved Supplier” in order to enter into an Agreement with the SFPUC/City. Approved Suppliers are entities that have met all the compliance requirements necessary to conduct business with the City, such as business tax registration and Chapter 12B compliance.

Vendors that are not currently doing business with the City must register within the City’s financial and procurement system to become an Approved Supplier. *Please note: The City also requires all subcontractors working under the Contractor to register with the City’s financial and procurement system. However, subcontractors are not required to be compliant with the City’s vendor requirements.*

Please go to the City’s vendor portal, SF City Partners (<https://sfcitypartner.sfgov.org/vendor>), to register.

Contractors must become Approved Suppliers, and subcontractors must be registered, **within two weeks** of the posting of the highest-ranked Proposer, in order for award of Agreement to occur/remain in effect.

10.8 Business Tax Registration

In accordance with San Francisco City Ordinance 345-88, all vendors conducting business with the City are required to maintain a valid business tax registration number. An Agreement will not be awarded to the Contractor unless business tax registration fees are paid in full by the time the Agreement is awarded. Proposer may contact the Tax Collector’s office at 415-554-4470 to confirm that business tax registrations fees have been paid in full. Each contractor must provide a taxpayer ID. Vendor may register their business for tax purposes by filling out the Business Registration online application: <https://newbusiness.sfgov.org/vendor/>.

10.9 Conflicts of Interest

The Contractor will be required to agree to comply fully with and be bound by all applicable provisions of state and local law related to conflicts of interest as discussed in greater detail under Section 12 of this RFP.

10.10 Chapter 14B Reporting Requirements

Contractor must submit all required payment information using the City’s online financial and procurement system as required by CMD to enable the City to monitor Contractor’s compliance with the LBE subcontracting commitments. Contractor must include its LBE subcontractor’s approved payment requests in any payment application to the City within 30 days of receiving an invoice from an LBE subcontractor. Contractor shall pay its LBE subcontractors within three working days after receiving payment from the City, except as otherwise authorized by the LBE Ordinance. Failure to submit all required payment information in the financial and procurement system with each payment request may result in the City Controller withholding 20% of the payment due pursuant to that invoice until the required payment information is provided.

Following the City's payment of an invoice, Contractor has 10 calendar days to acknowledge all subcontractors have been paid in the online financial and procurement system.

10.11 Nonprofit Compliance with California Attorney General Registry of Charitable Trusts

To receive a contract under this RFP, any nonprofit Proposer must be in good standing with the California Attorney General's Registry of Charitable Trusts by the time of contract execution and must remain in good standing during the term of the Agreement. Upon request, Proposer must provide documentation to the City demonstrating its good standing with applicable legal requirements. If Proposer will use any nonprofit subcontractors to perform the Agreement, Proposer will be responsible for ensuring the subcontractors are also in compliance with all requirements of the California Attorney General's Registry of Charitable Trusts at the time of contract execution and for the duration of the Agreement.

10.12 Cybersecurity Risk Assessment

As part of the City's evaluation process, the City may engage in Cybersecurity Risk Assessment (CRA). CRA may be performed for each entity manufacturing the product, performing technical functions related to the product's performance, and/or accessing the City's networks and systems. Where a prime contractor or reseller plays an active role in each of these activities, CRA may also be required for the prime contractor or reseller.

To conduct a CRA, the City may collect as part of this solicitation process one of the following two reports:

1. **SOC-2 Type 2 Report:** Report on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality or Privacy; **OR**
2. **City's Cyber Risk Assessment Questionnaire:** Proposer's responses to a City's Cyber Risk Assessment Questionnaire.

The above reports may be requested at such time the City has selected or is considering a potential Proposer. The reports will be evaluated by the SFPUC and the City's Department of Technology to identify existing or potential cyber risks to City. Should such risks be identified, the City may afford a potential Proposer the opportunity to cure such risk within a period of time deemed reasonable to the City. Such remediation and continuing compliance shall be subject to the City's on-going review and audit through industry-standard methodologies, including but not limited to: on-site visits, review of the entities' cybersecurity program, penetration testing, and/or code reviews.

11 Protest Procedures

11.1 Protest of Non-Responsiveness Determination

After receipt of proposals, the SFPUC, with the assistance of CMD, will conduct an initial screening of submitted proposals as set forth in Section 6.1 of this RFP. If staff determines that a proposal should be rejected because it is either non-responsive to RFP requirements or is otherwise unacceptable e.g., fails to meet minimum qualification requirements set forth in the RFP), then the City will issue a Preliminary Notice of Proposal Rejection to the applicable Proposer(s).

If a Proposer believes that the City has improperly determined that its proposal should be rejected, Proposer may submit a written notice of protest within five working days of the SFPUC's issuance of a Preliminary Notice of Proposal Rejection. Such notice of protest must be received by the SFPUC prior to 5:00 p.m. on or before the fifth working day following the SFPUC's issuance of the Preliminary Notice of Proposal Rejection. The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Proposer, and must cite the laws, rules, local ordinances, procedures, or RFP provisions on which the protest is based. In addition, the Proposer must specify facts and evidence sufficient for the SFPUC to determine the validity of the protest.

The City, at its discretion, may make a determination regarding a protest without requesting further documents or information from the Proposer that submitted the protest. Accordingly, the initial protest must include all grounds of protest and all supporting documentation or evidence reasonably available to the prospective Proposer at the time the protest is submitted. If the Proposer later raises new grounds or evidence that were not included in the initial protest, but which could have been raised at that time, then the City may decide not to consider such new grounds or new evidence.

Upon receipt of a timely and proper protest, the City will review the protest and conduct an investigation as it deems appropriate. As part of its investigation, the City may consider information provided by sources other than the Proposer. The City may also consider supplemental correspondence or other information relating to the original ground(s) of protest submitted by a protesting Proposer to the extent the City determines that such information will assist it in resolving the protest. At the completion of its investigation, the City will provide a written determination to the Proposer that submitted the protest.

The City will consider only protests received within the time and manner specified. If a Proposer does not protest a Preliminary Notice of Proposal Rejection within the time and in the manner specified above, then the City's determination set forth in the preliminary notice will become final. A Proposer's failure to protest as specified above, on or before the deadline specified above, shall constitute a complete and irrevocable waiver of the ground(s) of protest and a forfeiture of the Proposer's right to raise such ground(s) of protest later in the procurement process, in a Government Code Claim, or in other legal proceedings.

11.2 Protest of Agreement Award

As soon as the SFPUC finalizes Proposer rankings, the SFPUC will post the results on the [SFBid website](#).

Within five working days of the SFPUC's posting of the results, any Proposer that has submitted a responsive proposal and believes that the City has unfairly selected another Proposer for award may submit a written notice of protest.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Proposer, and must cite the laws, rules, local ordinances, procedures, or RFP provisions on which the protest is based. In addition, the Proposer must specify facts and evidence sufficient for the City to determine the validity of the protest. All protests must be received by the SFPUC prior to 5:00 p.m. on or before the fifth working day following the SFPUC's posting of the results.

The City, at its discretion, may make a determination regarding a protest without requesting further documents or information from the Proposer that submitted the protest. Accordingly, the initial protest must include all grounds of protest and all supporting documentation or evidence reasonably available to the Proposer at the time the protest is submitted. If the Proposer later raises new grounds or evidence that were not included in the initial protest, but which could have been raised at that time, then the City may not consider such new grounds or new evidence.

Upon receipt of a timely and proper protest, the City will review the protest and conduct an investigation as it deems appropriate. As part of its investigation, the City may consider information provided by sources other than the Proposer. The City may also consider supplemental correspondence or other information relating to the original ground(s) of protest submitted by a protesting Proposer to the extent the City determines that such information will assist it in resolving the protest. At the completion of its investigation, the City will provide a written determination to the Proposer that submitted the protest.

The City will consider only protests received within the time and manner specified. If a Proposer does not protest the SFPUC's posting of the results within the time and in the manner specified, above, then the City's selection will become final and SFPUC staff may proceed to recommend the highest-ranked Proposer for award by the SFPUC Commission. A Proposer's failure to protest as specified above, on or before the deadline specified above, shall constitute a complete and irrevocable waiver of the ground(s) of protest and forfeit the Proposer's right to raise such ground(s) of protest later in the procurement process, in a Government Code Claim, or in other legal proceedings.

11.3 Delivery of Protests

If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Proposers must transmit protests by a means that will objectively establish the date and time of receipt by the City. The SFPUC will not consider any protests or notices of protests made orally (e.g., by telephone).

Proposers must deliver any protests to: cab@sfwater.org and to shalesfwater.org

San Francisco Public Utilities Commission

Contract Administration Bureau

RE: **PUC.PRO.0297** SFPUC Customer Administrative Services Community Choice Aggregation

12 Conflict of Interest

The Contractor will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the San Francisco Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The Contractor will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the Contractor might be deemed contractors under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the Contractor that the City has selected the Proposer.

12.1 Obligations

It is the obligation of the Proposer as well as its subcontractors to determine whether or not participation in that contract constitutes a conflict of interest. While City staff maintains records regarding award and execution of contracts, it does not have access to specific information concerning which entities, partners, subcontractors or team members perform specific work on these contracts. A conflict of interest or an unfair advantage may exist without any knowledge of the SFPUC. Upon request, we can provide records concerning work performed by various subcontractors to assist proposers in their own evaluation of potential conflicts. But proposers have sole responsibility for compliance with these requirements. A court makes the final determination of whether an actual conflict exists. The guidelines below are provided to assist Proposers; however, the City is not providing legal advice in providing the information and assumes no responsibility or liability arising from Proposer's reliance on this information. The guidelines below address conflicts under the aforementioned laws but there are other laws that affect qualifications for a contract.

12.2 Work

There are many phases of work pertaining to City contracts. Potential conflicts arise out of progressive participation in various phases of that work. Set forth below are general guidelines regarding when participation in a specific phase of work may create a conflict. Because an actual determination regarding whether a conflict exists depends upon the specific facts of each situation, Proposers should treat the general guidelines set forth below only as a starting point. The guidelines do not constitute legal advice. A Proposer should consult with its legal counsel to determine whether a potential conflict exists.

1. **RFI/RFQ/RFP/Bid Documents.** Any entity that participates in the development of any of these documents has participated in "making the contract" for the work. For these purposes "participating in making" has the same meaning as under Government Code

Section 1090 and the term “entity” includes any parent, subsidiary or other related business.

2. **General Program Management Services.** Because these advisory services necessarily assist in general definitions of the program and projects, conflict would likely exist in participation in the design, construction management , and/or construction phase of any project.
3. **Preplanning.** Participation in preplanning work, which may include the needs assessment report, since it is an initial phase, would likely be limited only by previous participation in preparation of RFI/RFQ/RFP or bid documents.
4. **Planning.** The planning phase of any project establishes the facts pertaining to the project and possible options for consideration.
 - a. **Alternative Analysis Report.** This phase proposes to decision-makers the various alternatives in project scope, cost, schedule, and environmental impact necessary to make a determination of the proper project. Firms may have a conflict of interest in subsequent design work if they participated in the decision-making process of selecting an alternative.
 - b. **Conceptual Engineering Report.** This document defines the project and shapes the design contract. Participation in this phase may likely be in conflict with any future design services.
5. **Environmental Review.** Similar to the planning phase, this phase of work gathers information from other sources resulting in a definition of the project for the purposes of reviewing the environmental effects of the work. Firms participating in environmental review would likely not have a conflict in participating in subsequent phases.
6. **Final Engineering Design.** Documents produced under this phase constitute the definition of the construction contract. Participation in this phase would likely be in conflict with participation in any subsequent phases, such as construction management or general construction.
7. **Construction Management.** This work consists of review, assessment, and recommendation for actions based on interpretation of contract documents. No firm participating in one contract with SFPUC can review any of its own work performed under another contract. Conflicts would likely arise if any firm participates in either preparation of final engineering design or in preparing any documents enumerated in a contract for construction or in preparing any documents the SFPUC requires a Proposer to rely on in the preparation of its bid. Participation in this phase also would likely be in conflict with participation in the construction phase.
8. **Construction.** It is unlikely that participation in construction contracts, including alternative delivery projects, would result in conflicts on subsequent contracts. Restrictions on participation in construction contracts may be stipulated in other federal, state, or local laws.

9. **Alternative Delivery.** To the extent that an alternative delivery method is used (e.g., design-build or construction manager/general contractor), the restrictions on design or construction management services mentioned herein would apply to those phases of the alternative delivery project.
10. **General.** Work associated with gathering, assessing, or reviewing technical data such as geotechnical investigations, site surveys, condition assessments, or cost estimating would likely have conflicts with other work only if the firms were in a position to review their own work.
11. **Administrative Services.** Any subcontractor or vendor providing general administrative services such as communications, reprographic, janitorial or security services during one phase of a project will not be precluded from providing similar services during later phases of the same project.

12.3 Other General Restrictions Applicable to this RFP

A firm cannot be a Prime Proposer or JV Partner on more than one proposing team. In addition, if a designated Prime Proposer or JV Partner (lead or non-lead) intends to be listed as a subcontractor on another competing proposal, the Prime Proposer or JV Partner must fully disclose such intent to the affected parties **30 days prior** to the due date for proposal submittal. Failure to comply with these restrictions may result in the rejection of one or more affected proposals. A Prime Proposer or JV Partner cannot participate in more than one interview.

12.4 Consultation with Counsel

The SFPUC strongly advises any proposing firm to consult with their legal counsel to determine whether or not a conflict of interest exists. It is the responsibility of the proposing firm to make that determination. The SFPUC will not advise consultants on conflict of interest matters.

13 Acronyms and Abbreviations

AACE	Association for the Advancement of Cost Engineering
AGM	Assistant General Manager
BFS	Bruce Flynn Pump Station
BIM.....	Building Information Modeling
CAB	Contract Administration Bureau
CCM	Contractor Construction Manager
CEQA	California Environmental Quality Act
CHS.....	Channel Pump Station\\
CM/GC	Construction Manager/General Contractor
CM.....	Construction Management
CMB	Construction Management Bureau
CMD	Contract Monitoring Division
CMIS.....	Construction Management Information System
CPI.....	Consumer Price Index
CPM.....	Critical Path Method
CSPE	Consultant Services Performance Evaluation
EIR	Environmental Impact Report
EMG	Environmental Management Group
EMB.....	Engineering Management Bureau
EOPR	Effective Overhead and Profit Rate
FSHP	First Source Hiring Program
HCAO.....	Health Care Accountability Ordinance
HCIP	Hetchy Capital Improvement Program
ICS	Influent Control Structure
ICC	International Code Council
IRS	Internal Revenue Service
JV	Joint Venture
LBE	Local Business Enterprise
LOS.....	Level of Service

MCO Minimum Compensation Ordinance
 mgd million gallons per day
 NPF North Point Wet Weather Facility
 NTP Notice to Proceed
 O&M Operations & Maintenance
 ODC Other Direct Cost
 OPS Overhead and Profit Schedule
 OSP Oceanside Water Pollution Control Plant
 PLA Project Labor Agreement
 PMB Program Management Bureau
 PMP Project Management Professional
 RFI Request for Information
 RFP Request for Proposals
 SELS Southeast Lift Station
 SEP Southeast Water Pollution Control Plant
 SIP Social Impact Program
 SFPUC San Francisco Public Utilities Commission
 SOP Standard Operating Procedure
 SSIP Sewer System Improvement Program
 VFD Variable Frequency Drive
 WBS Work Breakdown Structure
 WSIP Water System Improvement Program
 WWE Wastewater Enterprise

14 List of Appendices

- A. Professional Services Agreement (P-600)
- B. Fee Schedule (Excel file)
- C. Contract Monitoring Division (CMD) Forms
 - 1. Form 2A – CMD Contract Participation Form
 - 2. Form 2B – “Good Faith Efforts” Requirements Form
 - 3. Form 3 – CMD Compliance Affidavit
 - 4. Form 4 – CMD Joint Venture Form (if applicable)
 - 5. Form 5 – CMD Employment Form
- D. Chapter 12B Complete Compliance Guide
- E. Minimum Compensation Ordinance (MCO) Declaration
- F. Health Care Accountability Ordinance (HCAO) Declaration
- G. First Source Hiring Program Agreement
- H. Release of Liability and Waiver
- I. Consultant Services Performance Evaluation Procedure
- J. Social Impact Partnership Supporting Documents

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

Agreement between the City and County of San Francisco and

[Insert name of Contractor]

**PRO.0297
SFPUC Customer Administrative Services
Community Choice Aggregation**

This Agreement is made this [Insert day] day of [Insert month], [Insert year], in the City and County of San Francisco (“City”), State of California, by and between [Insert name and address of Contractor] (“Contractor”) and City.

Recitals

WHEREAS, the San Francisco Public Utilities Commission (“Department,” or “SFPUC”) wishes to procure comprehensive and integrated customer data management, billing, and data exchange services from Contractor; and

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

WHEREAS, Contractor was competitively selected pursuant to Sourcing Event ID PUC.PRO.0297; and

WHEREAS, this is a contract for Services and the Local Business Enterprise (“LBE”) subcontracting participation requirement for the Services has been waived by the Contract Monitoring Division of the City (CMD); and

WHEREAS, on [Insert date of Civil Service Commission action or DHR approval date if under \$100K], the SFPUC obtained approval for the Agreement from the [Civil Service Commission or Department of Human Resources on behalf of the Civil Service Commission] under PSC number [Insert PSC number] in the amount of [Insert dollar amount] for the period of [Insert number of years]; and

WHEREAS, on [Insert date of Commission], the City’s Public Utilities Commission approved this Agreement by Resolution No. [Insert resolution number]; and

WHEREAS, on [Insert date of Board action], the City’s Board of Supervisors approved this Agreement pursuant to San Francisco Charter Section 9.118 by Resolution No. [Insert resolution number].

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Agreement” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and the SFPUC.

1.3 “City Data” means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

1.4 “CMD” means the Contract Monitoring Division of the City.

1.5 “Confidential Information” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

1.6 “Contractor” or “Consultant” means [Insert name and address of Contractor].

1.7 “Deliverables” means Contractor’s work product resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

1.8 “Effective Date” means the Effective Date stated in the Notice of Contract Award issued by the SFPUC once this Agreement has been fully approved and executed.

1.9 “Mandatory City Requirements” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.10 “Party” or “Parties” means the City and Contractor either collectively or

individually.

1.11 “Services” means the work performed by Contractor under this Agreement as specifically described in the “Scope of Services” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the Effective Date and expire three years later, unless earlier terminated as otherwise provided herein.

2.2 The City has the option to extend the term of the Agreement for up to three additional years, as approved by the SFPUC. The City may extend the term of this Agreement beyond the expiration date by exercising an option at the City’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

Article 3 Financial Matters

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

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

3.2 **Guaranteed Maximum Costs.** The City’s payment obligation to Contractor cannot at any time exceed the amount certified by City’s Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, “Modification of this Agreement.”

3.3 Compensation.

3.3.1 **Calculation of Charges.** Contractor shall provide an invoice to the City

on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the General Manager of the SFPUC, in his or her sole discretion, concludes has been satisfactorily performed. In no event shall the amount of this Agreement exceed Seventeen Million Dollars (\$17,000,000). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." A portion of payment may be withheld until conclusion of the Agreement if agreed to by both Parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any services covered by this Agreement.

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until SFPUC approves the Services delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory delivery of goods and/or Services even if the unsatisfactory character may not have been apparent or detected at the time such payment was made. Goods and/or Services delivered pursuant to this Agreement that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.3 Withhold Payments. If Contractor fails to provide goods and/or Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, the SFPUC, and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.5 Reserved (LBE Payment and Utilization Tracking System)

3.3.6 Getting paid by the City for Services.

(a) The City and County of San Francisco utilizes the Paymode-X[®] service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit http://portal.paymode.com/city_countyofsanfrancisco.

(b) At the option of the City, Contractor may be required to submit invoices directly in SOLIS. For access to SOLIS, submit a request through SFPUCVendorSupport@sfwater.org.

3.3.7 Reserved (Grant Funded Contracts)

3.3.8 Payment Terms.

(a) **Payment Due Date.** Unless City notifies the Contractor that a dispute exists, Payment shall be made within thirty (30) calendar days, measured from (1) the delivery of goods and/or the rendering of services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted electronic payment to Contractor.

(b) **Reserved (Payment Discount Terms)**

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

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6 **Reserved (Payment of Prevailing Wages for Trade Work)**

Article 4 Services and Resources

4.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.2 Personnel.

4.2.1 **Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement and the task orders.

4.3 Subcontracting.

4.3.1 Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10, "Additional Requirements Incorporated by Reference," of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.3.2 City's execution of this Agreement constitutes its approval of the subcontractors listed in Appendix B-1, Fee Schedule. Consistent with SFPUC policy, any modifications to the list of subcontractors must be effectuated via City's approved invoice processing system, subject to the written approval of the City, and CMD, as needed.

4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.4.1 **Independent Contractor.** For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to

control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 Assignment. The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

4.6 Warranty. Contractor warrants to City that the Services will be performed with

the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

Article 5 Insurance and Indemnity

5.1 Insurance.

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

(a) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

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

(c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.

(d) Professional Liability Insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Technology Errors and Omissions Liability coverage, with limits of \$20,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the Agreement and shall also provide coverage for the following risks:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

(f) Cyber and Privacy Insurance with limits of not less than \$20,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

(g) Reserved. (Pollution Liability Insurance)

5.1.2 Additional Insured Endorsements.

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) Reserved (Pollution Auto Liability Insurance Additional Insured Endorsement)

5.1.3 Waiver of Subrogation Endorsements.

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

5.1.4 Primary Insurance Endorsements.

(a) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Reserved (Pollution Liability Insurance Primary Insurance Endorsement)

5.1.5 Other Insurance Requirements.

(a) Thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 entitled "Notices to the Parties."

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

policies.

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

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

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

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

5.2 Indemnification. Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City

from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "CALCULATION OF CHARGES," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 Liability for Use of Equipment. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 Liability for 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.

Article 7 Payment of Taxes

7.1 Contractor to Pay All Taxes. Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

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

7.2.1 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.

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

7.2.3 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.

7.2.4 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.

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience.

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

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

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

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

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

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

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

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

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

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

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

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

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 City's payment obligation under this section shall survive termination of this Agreement.

8.2 Termination for Default; Remedies.

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

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

3.5	Submitting False Claims	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment	11.10	Compliance with Laws
Article 5	Insurance and Indemnity	Article 13	Data and Security
Article 7	Payment of Taxes	--	--

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

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

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with

respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City. This Section 8.2.2 shall survive termination of this Agreement.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

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

8.4 **Rights and Duties upon Termination or Expiration.**

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement

6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	Article 13	Data and Security
9.1	Ownership of Results	--	--

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights In Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

10.2 Conflict of Interest. By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Article 141. Information about and the text of Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of Article 141, irrespective of the listing of obligations in this section.

10.5 Nondiscrimination Requirements.

10.5.1 Nondiscrimination in Contracts. Contractor shall comply with the provisions of Articles 131 and 132 of the San Francisco Labor and Employment Code. Contractor shall incorporate by reference in all subcontracts the provisions of Article 131.2(a), 131.2(c) – (i), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Labor and Employment Code Section 131.2(b). Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Labor and Employment Code Section 131.2(b).

10.6 Local Business Enterprise and Non-Discrimination in Contracting

Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

10.7 Minimum Compensation Ordinance. If Labor and Employment Code Article 111 applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of the Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

10.8 Health Care Accountability Ordinance (HCAO). If Labor and Employment Code Article 121 applies to this contract, Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 121.3 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. Information about and the text of Article 121, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this section.

10.9 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City

elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Reserved (Slavery Era Disclosure)

10.13 Reserved (Working with Minors)

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Article 142, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Labor and Employment Code ("Article 142"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, irrespective of the listing of obligations in this section. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in Article 142.

10.14.2 The requirements of Article 142 shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Article 142 shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Reserved (Public Access to Nonprofit Records and Meetings)

10.16 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 Reserved (Distribution of Beverages and Water)

10.18 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.19 **Reserved (Preservative Treated Wood Products)**

10.20 **[Omit if Not Applicable] Nonprofit Compliance with CA Attorney General Registry of Charitable Trusts.** Contractor represents that it is in good standing with the California Attorney General's Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City request, Contractor shall provide documentation demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General's Registry of Charitable Trusts at the time of contract execution and for the duration of this Agreement. Any failure by Contractor or any subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

Article 11 General Provisions

11.1 **Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: [Insert name or title of department contact person, name of department, mailing address, and e-mail address]

To Contractor: [Insert name of Contractor, mailing address, and e-mail address]

Any notice of default must be sent by registered mail or other trackable overnight mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, “Notices to Parties,” regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor’s claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.2 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor’s compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

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

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

11.9 Entire Agreement. This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, “Modification of this Agreement.”

11.10 Compliance with Laws. Contractor shall keep itself fully informed of the City’s

Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

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

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

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the Request for Proposals (RFP), and Contractor's proposal dated [Insert date of proposal]. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

11.14 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

Article 12 Department Specific Terms

12.1 Reserved

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 Protection of Private Information. If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 Confidential Information. In the performance of Services, Contractor may have access to, or collect on City’s behalf, City’s proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City’s behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

13.2 Reserved .(Payment Card Industry (“PCI”) Requirements.) Reserved (Business Associate Agreement)

13.3 Management of City Data and Confidential Information.

13.3.1 Use of City Data and Confidential Information. Contractor agrees to hold City’s Data received from, or collected on behalf of, the City, in strictest confidence. Contractor shall not use or disclose City’s Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City’s Data outside the United States is subject to prior written authorization by the City. Access to City’s Data must be strictly controlled and limited to Contractor’s staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor’s own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.3.2 Disposition of Confidential Information. Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all data given to or collected by Contractor on City’s behalf, which includes all original media. Once Contractor has received written confirmation from City that City’s Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in

whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by “clearing,” “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

13.4 Ownership of City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City.

13.5 Loss or Unauthorized Access to City’s Data; Security Breach Notification. Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any “Leak”) within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. **Contractor shall pay for the provision to the affected individuals of twenty-four (24) months of free credit monitoring services, if the Leak involved information of a nature reasonably necessitating such credit monitoring.** The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

Article 14 MacBride And Signature

14.1 MacBride Principles - Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

CITY

CONTRACTOR

Recommended by:

[Insert name of Contractor]

Dennis J. Herrera
General Manager
San Francisco Public Utilities Commission

[Insert name of authorized representative]
[Insert title]

City Supplier Number: [Supplier number]

Approved as to Form:

David Chiu
City Attorney

By: _____
[Insert name of Deputy City Attorney]
Deputy City Attorney

Approved:

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

By: _____

Appendices

- A: Scope of Services
- B: Calculation of Charges
- B-1: Fee Schedule

Appendix A Scope of Services

- 1. Description of Services.** Contractor agrees to perform the following Services:

TASK 1 BILLING PROCESS MANAGEMENT

CleanPowerSF's customer billing process will be principally administered through Contractor, including critical processes outlined in CleanPowerSF's Services Agreement with PG&E and PG&E's Rule 23. Contractor will be responsible for:

1. Obtaining all customer usage data from PG&E's meter data management agent (MDMA) server to allow for timely billing (according to PG&E's requirements).
2. Maintaining and communicating the amount to be billed by PG&E for services provided by CleanPowerSF, according to PG&E's applicable billing window.
3. Receiving and maintaining all data related to payment transactions toward CleanPowerSF's charges from PG&E after payment is received by PG&E customers.
4. Completing the technical testing of all necessary electronic interfaces with PG&E, which provide for the communication by Internet and Electronic Data Interchange (EDI) between the Contractor and PG&E to confirm system compatibility related to CCASRs, billing collections, meter reading, and electricity usage data.
5. Demonstrating successful completion of all standard PG&E technical testing prior to the customer enrollment period, and have the capability and signed agreements necessary to communicate or exchange the information using EDI, Internet, or an electronic format acceptable to PG&E.
6. Applying commercially reasonable efforts to remedy billing errors for any customer in a timely manner, no more than two billing cycles.
7. Maintaining rate schedules provided by CleanPowerSF, supporting rate changes as needed, and ensuring that rates are charged appropriately to CleanPowerSF customers.
8. Supporting billing related programs via reporting, adjustments to enrolled customers, and other related needs as requested by CleanPowerSF.
9. Managing ad hoc billing needs at the request of CleanPowerSF staff.

TASK 2 CUSTOMER DATA MANAGEMENT

Data management and data exchanges with PG&E will be primarily managed through Contractor. Storage and management of customer data in a secure, scalable and accessible fashion is critical to CleanPowerSF's operations. Under this Task, Contractor will be responsible for:

1. Maintaining an accurate customer database of all customers offered CleanPowerSF's CCA service. Identify each customer's contact and account information, enrollment status, tariff election(s), billed usage and demand, payment history, on-site generating capacity, if applicable, and any correspondence with the customer as well as other information as needed.

2. Processing requested changes to a customer's choice of services, or community choice aggregation service requests (CCASR), including but not limited to:

a. Enrollment in CleanPowerSF's default and voluntary rate schedule options;

b. Enrollment in Net Energy Metering (NEM), Net Billing Tariff, or other similar billing programs; and

c. Customer initiated returns to bundled utility service or customer initiated returns to direct access service.

3. Maintaining an accessible archive of billing and usage records for all CleanPowerSF customers for no less than ten years.

4. Maintaining and communicating as needed records of net-energy metering credits, as well as usage and generation on a monthly, annual and lifetime basis for CleanPowerSF customers participating in Net Energy Metering or similar programs. As requested by CleanPowerSF staff, support data analysis and processing for NEM related processes or for similar programs.

5. Storing and maintaining all customer data in compliance with California Public Utilities Commission regulations (as outlined in D. 12-08-045 Attachment B), PG&E's data privacy requirements, and CleanPowerSF's Data Privacy Policy.

6. Developing and deploying a data back-up system to provide risk management support.

7. Support data management planning, including providing recommendations to optimize the architecture of CleanPowerSF systems and data to support business optimization.

TASK 3 TECHNICAL CUSTOMER COMMUNICATIONS SERVICES

Contractor will be responsible for providing functionality to support CleanPowerSF customer service and staff interactions with customers. This includes:

1. Providing and resourcing support for a Customer Relationship Management (CRM) system to support CleanPowerSF's in-house call center, key accounts managers, and program staff, with the following minimum characteristics:

a. The CRM should provide functional access to customer account data in order to enable individual customer support; this includes usage and billing data as well as

account details such as rate class and contact information;

b. The CRM should provide the ability to track customer interactions through notes, call records and mailings;

c. The CRM should provide the ability for users to easily create exportable reports and customer lists that include daily call stats that can be accessed at any time to maintain service quality;

d. The CRM should provide the flexibility to support and record customer interaction with a variety of CleanPowerSF programs; and

e. The CRM should be modifiable in response to enhancements or requests from CleanPowerSF staff.

2. Provide access to a configurable Interactive Voice Response (IVR) self-service system, according to parameters set by CleanPowerSF, and track how many customers start and complete self-service options without live-agent assistance. Update IVR process map and scripts as requested by CleanPowerSF and provide additional system support as needed

3. Providing customer mailing lists for new move-in customer notices and opt-out confirmation letters as well as other CleanPowerSF mailing needs, within seven days.

4. Providing an email marketing platform that allows for regular and secure email communication with CleanPowerSF customers, and assisting with developing and managing customer lists within the email marketing platform.

5. Providing an SMS (Text) messaging application that allows for regular and secure SMS messaging with CleanPowerSF customers.

TASK 4 ENERGY DATA MANAGEMENT/REPORTING

CleanPowerSF will rely on Contractor to generate regular customer data and billing related reports and to comply with the requirements of the California Independent System Operator (CAISO) in regard to meter data settlements and other needs as dictated by CleanPowerSF's role as a load serving entity. Contractor will be responsible for:

1. Providing CleanPowerSF regular customer data and billing operations reports on a frequency and a delivery method, as agreed upon, including ensuring that weekly and monthly status reports are provided on a timely basis (e.g., monthly reports are provided within the first week of each calendar month).

2. Providing CleanPowerSF, or CleanPowerSF's Scheduling Coordinator (SC) with Settlement Quality Meter Data (SQMD) as required by the CAISO. Submit the SQMD directly to the CAISO on behalf of CleanPowerSF or directly to CleanPowerSF's designated SC.

3. Coordinating SQMD submissions with CleanPowerSF and submitting early Operational Meter Analysis and Reporting (OMAR) data to CleanPowerSF at least three

business days in advance of required submission to CAISO for review and shadow settlement calculations.

4. Preparing the SQMD in accordance with prudent utility practice, and sharing SQMD preparation and calculation methodology with CleanPowerSF in advance of service commencement.

5. Serving as a Qualified Reporting Entity (QRE) for (a) certain locally situated, small scale renewable generators supplying electric energy to CleanPowerSF through a feed-in tariff; and/or (b) certain locally situated, small-scale renewable generators that may be owned and/or controlled by the San Francisco Public Utilities Commission (SFPUC) or CleanPowerSF, supplying electric energy to CleanPowerSF through such arrangements, should this service be deemed necessary by CleanPowerSF.

6. Submitting a monthly generation extract file to the Western Renewable Energy Generation Information System (WREGIS) on CleanPowerSF's behalf, which will conform to the characteristics and data requirements set forth in the WREGIS interface control document for QREs.

7. Collecting applicable generation and usage data for CleanPowerSF's renewable energy projects and, consistent with PG&E's applicable meter servicing arrangement, serve as designated "subcontractor" for certain renewable energy projects.

8. Assist CleanPowerSF in completing requisite generation registration materials, as such materials may be required by WREGIS, the California Energy Commission, the California Public Utilities Commission and/or other entities to effect the successful crediting of renewable energy certificates, as appropriate, to CleanPowerSF's WREGIS account.

TASK 5 SOCIAL IMPACT PARTNERSHIP

1. Terms and Conditions.

a. Contractor shall provide its Social Impact Partnership (SIP) Commitments (detailed in its SIP Proposal) during the term of the Agreement. The representations, warranties, and other terms contained in Contractor's SIP Proposal will be the basis for a SIP Plan, but are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other persons or entities.

b. Providing SIP Commitments is a deliverable, zero-dollar task. Contractor may not allocate or include any hours or dollars in Contractor's costs for the services under the Agreement in order to perform or deliver the voluntarily proposed SIP Commitments. Contractor shall fund the SIP Commitments independently and such funding shall neither be tied to, nor dependent upon, SFPUC funds or sources of funding, receivable from SFPUC, including retention associated with the Agreement. This requirement of independent funding includes direct financial contributions and any funding related to the performance or delivery of the SIP Commitments. The provision of SIP Commitments does not entitle Contractor to additional work beyond the services specified within the Agreement.

c. Contractor shall commence performance of the SIP Commitments promptly after issuance of the first Notice to Proceed (NTP) for the Agreement. SIP Commitments performed as part of previous contracts or prior to Contractor being awarded the Agreement cannot count towards Contractor's SIP Commitments for the Agreement. If Contractor has established programs or plans that are consistent with the SIP program areas described in the Request for Proposals (RFP), Contractor may continue those programs as part of its SIP Commitments and will be given credit for activities that are performed following the issuance of the first NTP by the SFPUC.

d. Contractor's progress on delivering SIP Commitments must keep pace with Contractor's progress of work on the project. If the SFPUC's SIP Program team determines that Contractor's delivery of SIP Commitments is 10% or more behind its percentage of completion of project work, the SFPUC may withhold from subsequent payments owed to Contractor for its work on the project an amount equal to the value of the portion of SIP Commitments that Contractor should have delivered in order for its delivery of SIP Commitments to keep pace with Contractor's project work.

e. During the term of the Agreement, if Contractor's delivery of SIP Commitments is 10% or more behind its percentage of completion of project work, the City, in its sole discretion, may deem Contractor in material breach of contract. The City's remedies for Contractor's breach may include, at City's sole discretion, but need not be limited to (1) revoke non-compliant Contractor's eligibility for SIP Commitment bonus points on future Covered Contracts; (2) assess liquidated damages; (3) withhold progress payments; (4) withhold release of retention; and/or (5) suspend or terminate the Covered Contract.

f. If Contractor fails to complete its SIP Commitments, the SFPUC may withhold the value of the uncompleted SIP Commitments and deduct said amount from the sum the SFPUC owes to Contractor for performance of its work, which amount the SFPUC may reasonably determine in its sole discretion. If the SFPUC imposes actual or liquidated damages as a remedy against Contractor for non-compliance, the Controller shall withhold the damages assessed until such time as either Contractor has conceded to or acquiesced in the assessment or, in the event of an appeal, there is a determination no longer subject to judicial review. The Controller shall then deposit the amount withheld into a special account which shall be created for the sole purpose of receiving such funds. The funds deposited into this account shall be distributed by the Controller in accordance with the original SIP Commitments and by the process set forth in the SFPUC Social Impact Partnership Rules and Regulations.

g. If Contractor fails to perform any of its SIP Commitments, Contractor shall be liable for liquidated damages on the Agreement in an amount equal to 110% of the total value of unmet SIP Commitments as determined by the SFPUC in its sole discretion.

h. In the event that fulfillment of SIP Commitments becomes impossible or impracticable, Contractor may request a modification to its SIP Commitments by documenting the impossibility or impracticability of proceeding with its existing SIP Commitments and proposing one or more alternatives subject to review and approval by the SFPUC as provided in the Covered Contract.

i. If the SFPUC modifies or amends the Agreement with a resulting cumulative increase of the total value of the Agreement being 10% or more than its original value, Contractor shall propose an increase to its SIP Commitment. Such increase shall be (1) proportional to the increase in contract value under the amendment(s) or modification(s) and (2) consistent with San Francisco Administrative Code Section 21F.4, and not increase the costs for delivery of the SIP Commitments to the SFPUC.

j. Contractor shall save, keep, hold harmless, and fully indemnify the City and any of its officers or employees from all damages, costs, or expenses in law or equity, or claims for same, that may at any time arise from performance of SIP Commitments. Contractor shall bear sole responsibility and liability, if any, for any breach of the SIP Program provisions of its Covered Contract or San Francisco Administrative Code Chapter 21F.

2. Project Team.

[Insert name] shall serve as the Executive in Charge to manage Contractor's SIP Commitments and provide fiduciary oversight. The Executive in Charge shall ensure that the SIP Commitments listed in the Social Impact Partnership Commitments Table below are delivered to the communities that they are intended to benefit in a transparent and accountable manner. The Executive in Charge shall work with the SIP Coordinator, [Insert name], to organize, plan, track, measure, and report on Contractor's SIP Commitments.

3. SIP Commitments.

Contractor shall provide [Insert value] in direct financial contributions and [Insert value] in volunteer hours. Contractor commits to a minimum total contribution of [Insert value] over the term of the Agreement as stated in Contractor's SIP Proposal and the Social Impact Partnership Commitments Table below.

Social Impact Partnership Commitments Table

			(A)	(B)	(C)	(D)	(F)
Social Impact Partnership Program Area	Strategies and Expected Outcomes	Timetable & Duration	Direct Financial Contribution	Volunteer Hours	Volunteer Hourly Rate (rate is standardized and cannot be changed)	Total Value of Volunteer Hours (B x C)	Total Contributions (A + D)
					\$150/hr		
TOTAL							

4. Accountability and Deliverables.

Contractor shall provide a description of the accountability methods to ensure that the proposed SIP activities will be delivered in a transparent and accountable manner. Contractor

shall provide reports and supporting documentation consistent with the reporting requirements detailed below to establish fulfillment of the SIP Commitments.

Contractor must provide the following deliverables during performance of the Agreement:

a. **SIP Plan and Timeline.**

Contractor must develop and submit to the SFPUC a SIP Plan and Timeline within three months of issuance of the Notice of Contract Award. The SIP Plan and Timeline must provide details regarding expenditures, a schedule, and timelines for executing Contractor's SIP Commitments.

b. **SIP Commitments and Reporting.**

i. Contractor shall deliver the proposed SIP Commitments specified in the SIP Proposal and the SIP Plan. Any proposed changes to the SIP Commitments as set forth herein shall be submitted in writing for review by the SFPUC SIP Program team.

ii. Contractor must submit SIP Commitment progress reports at least quarterly during the term of the Agreement (including any revisions to the work plan and associated timelines as necessary to ensure Contractor completes the measurable commitments during the term of the Agreement) to the SFPUC SIP Program team. The progress reports must identify activities and detail the quantifiable outcomes, key metrics, and the total number of volunteer hours and/or financial commitments performed during that period. As part of the quarterly progress reports, Contractor must also submit documentation to substantiate that the SIP Commitments and any funds or volunteer hours associated therewith were delivered (a non-exhaustive, illustrative list of examples of substantiating documentation includes: timesheets, receipts, cancelled checks, sign-in sheets from events and trainings, formal agreement documents, agendas and presentations from meetings, and statements of activities). Contractor must submit progress reports by the last business day of the month following the close of the previous three-month period.

iii. Contractor shall submit the reports noted above and any other documentation requested by the SIP Program team so the SIP Program team can report on Contractor's progress to the SFPUC Commission, the public and all potentially interested stakeholders in a transparent, accessible and accountable manner. These reports and documentation shall be adequate to enable the SIP Program team, the SFPUC Commission, and all interested stakeholders to evaluate and measure the efficacy of Contractor's SIP Commitments. Contractor shall upon request publicly report all of the requested information to the SFPUC Commission, the public and any interested stakeholders or decision-makers regarding the results of Contractor's SIP Commitments.

iv. Contractor shall also submit a stand-alone annual newsletter to the SFPUC SIP Program team documenting the highlights of the SIP Commitments and outcomes for the year.

5. Statements of Understanding.

Contractor acknowledges that they agree with the following statements:

- a. Contractor is bound by all instructions in the RFP for the SIP Proposal.
- b. Contractor's SIP Commitments must directly benefit the communities, neighborhoods, and/or residents served by or impacted by the SFPUC.
- c. SIP Commitments must provide support by monetary donations or services to or through Beneficiaries (as that term is defined in Administrative Code Section 21F.2 as follows: "Beneficiary" means an organization that is eligible to receive a Social Impact Commitment. A Beneficiary may be: (1) a nonprofit corporation that has established and maintains valid nonprofit status under Internal Revenue Code Section 501(c)(3), as amended, and all rules and regulations promulgated under that section; (2) an organization that has a fiscal agent that is a nonprofit corporation that has established and maintains valid nonprofit status under Internal Revenue Code section 501(c)(3), as amended, and all rules and regulations promulgated under said section and which provides that organization with fiduciary oversight, financial management, and administrative services related to its operation; or (3) a public school, which may include a public school district, County Office of Education, and/or a public college or university. The following are not eligible Beneficiaries: any (1) City department, office, board, commission, or other entity, or (2) City official or employee or Relative of a City official or employee, unless the resulting benefit is incidental to and not unique to the City official or employee or Relative, but rather benefits the general public or a particular community that is the focus or target of the Social Impact Commitment.
- d. SIP Commitments shall not go to, nor benefit, any City department or employee.
- e. SIP Commitments are separate from and in addition to any regulatory or legal requirements related to the Agreement.
- f. Contractor must deliver its SIP Commitments at no cost to the SFPUC.
- g. Contractor is contractually obligated to deliver the total commitment amount listed in the Social Impact Partnership Commitments Table in the Agreement.
- h. Only activities commenced after the first NTP for the Agreement is issued will count towards the fulfillment of Contractor's SIP Commitments.
- i. Contractor is obligated to comply with SFPUC's SIP Commitments reporting requirements.
- j. Contractor is obligated to comply with the terms and conditions set forth in this section and in the Agreement.

Contractor shall provide all of the SIP Commitments, consistent with all of the terms of Contractor's SIP Proposal dated [Insert date], which is incorporated herein by this reference. Should there be any conflicts or discrepancies between the language in this section and Contractor's SIP Proposal, the terms of the language of this section shall prevail as

Contractor and SFPUC's final mutual understanding and agreement.

Contractor must submit all written Deliverables, including any copies, on recycled paper and printed on double-sided pages to the maximum extent possible.

2. 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.

3. Department Liaison. In performing the Services provided for in the Agreement, Contractor's liaison with the SFPUC will be [Insert name of department contact].

4. Task Orders. Performance of the service under the Agreement will be executed according to a task order process, and Contractor is required to provide adequate quality control processes and deliverables in conformance with the technical requirements of the task order. The SFPUC Contract Manager will initially identify tasks and request Contractor to propose a project scope, sub tasks, staffing plan, Local Business Enterprise (LBE) utilization, schedule, deliverables, budget and costs to complete the task in accordance with Appendix B, Calculation of Charges. All costs associated with the development of the scope of work for each task order shall be borne by Contractor. A final task order will be negotiated between the SFPUC Contract Manager and Contractor and then submitted to the SFPUC Bureau Manager for approval. However, as provided in the Request for Proposals, the budget, if applicable, identified for tasks is an estimate, and the City reserves the right to modify the applicable budget allocated to any task as more specific information concerning the task order scope becomes available.

The task order request will be processed for Controller certification of funding, after which a Notice to Proceed (NTP) will be issued. Contractor is hereby notified that work cannot commence until Contractor receives a written NTP in accordance with the San Francisco Administrative Code. ***Any work performed without an NTP will be at Contractor's own commercial risk.*** The calculations of costs and methods of compensation for all task orders under the Agreement shall be in accordance with Appendix B, Calculation of Charges, and Appendix B-1, Fee Schedule.

5. Reports. Contractor shall submit reports as specified in the Scope of Work, and as further requested by the SFPUC. Format for the content of such reports shall be determined by the SFPUC. The timely submission of all reports is a necessary and material term and condition of the Agreement. Written reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

6. Performance Evaluation. Performance evaluations support the SFPUC's objective of continuously improving the quality of Contractor services. The SFPUC may or may not, at its sole discretion, conduct evaluation(s) of Contractor's performance. Ratings are ultimately the decision of the SFPUC and are not subject to negotiation with Contractor. However, Contractor may provide comments on a performance evaluation form if an evaluation is performed. In the event that the SFPUC conducts performance evaluation(s) of Contractor, such performance

evaluation(s) shall not confer any express or implied rights upon Contractor, nor shall they shift any liability to the SFPUC for Contractor's performance of the contract.

Appendix B Calculation of Charges

As part of Contractor's proposal dated [Insert date], Contractor submitted proposed billing rates, attached hereto as Appendix B-1, Fee Schedule, for the requested tasks identified in Appendix A, Scope of Services, which are incorporated herein by this reference.

As provided in Appendix B-1, Fee Schedule, the budget identified for tasks is an estimate, and the City reserves the right to modify the budget allocated, if applicable, to any task as more specific information concerning the task order scope becomes available.

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.

1. Billing Rates. Contractor's billing rates and each and every staff classification as stated in Appendix B-1, Fee Schedule, will be the billing rates for the listed individuals. The billing rate may not exceed the lowest rate charged to any other governmental entity except the City and County of San Francisco. Billing rates may be adjusted annually. The first adjustment may be made no earlier than the release of the January Consumer Price Index (CPI) increase published in the first calendar year following the proposal due date of [Insert proposal due date]. The amount of the adjustment is limited to a maximum of the CPI annual percentage change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year. No increase, including the annual CPI adjustment, is allowed to billing rates exceeding \$220 per hour, unless the SFPUC Contract Manager and Bureau Manager authorize an increase to the rate in writing.

2. Personnel Changes. Any proposed changes to project personnel or staff classification as listed in Appendix B-1, Fee Schedule, must be approved in advance of any work commencing on the project and in writing by the SFPUC Contract Manager. These personnel changes may include but are not limited to:

- a. Proposed addition of new project personnel to perform requested services that are within the scope of the Agreement;
- b. Proposed change of staff classification for existing personnel; and/or
- c. Proposed replacement or substitution of any employee listed in Appendix B-1, Fee Schedule, due to termination, promotion or reclassification.

All proposed personnel must meet all qualification requirements established by the Agreement.

3. Effective Overhead and Profit Rate. The Effective Overhead and Profit Rate (EOPR) for PRO.0297 is [Insert number]. The EOPR or Individual Firm Overhead and Profit Rate will apply to the billing rate of all individuals not listed in Appendix B-1, Fee Schedule. The EOPR will also apply to all amendments to the Agreement. If a new subcontractor is added during the duration of the Agreement, the new individual firm multiplier can be no more than the EOPR.

4. Other Direct Costs. Direct reimbursable expenses (or “other direct costs” (ODCs)) shall include actual direct costs (with no markup) of expenses directly incurred in performing the work. All ODCs must receive written pre-approval from the SFPUC Contract Manager.

a. The following items will be eligible for reimbursement as ODCs:

i. Task-specific out-of-town travel as requested by the SFPUC (“out-of-town” shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, and Solano). Out-of-town travel must be non-routine.

a) Rental vehicle or car share: traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented.

b) Personal vehicle use: The SFPUC will pay Contractor on a per mile basis as established by the United States Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. Should the travel begin or end on a normal workday, Contractor must subtract commuting mileage from total mileage to calculate reimbursable mileage. Contractor must submit to the SFPUC an approved mileage log and expense report with its monthly invoices.

c) Project vehicle rental/lease cost, gasoline, tolls and parking. Contractor must request the project vehicle and receive pre-authorization by SFPUC staff. The SFPUC will only reimburse the business portion of the vehicle use. Vehicle mileage log and an expense report are required for consideration of reimbursement. Since auto insurance is already part of the Agreement, the SFPUC will not reimburse any additional insurance costs. Commuting to Moccasin from Contractor’s temporary home is not eligible for reimbursement.

ii. Specialty printing (“specialty,” as used herein, shall mean large volume printing and color printing and requires prior written approval from SFPUC project staff and documentation of the written approval from the SFPUC must be included with the invoice);

iii. Task-related permit fees;

iv. Expedited courier services when requested by SFPUC staff; and

v. Task-specific safety equipment.

b. Anything not listed above is not eligible for reimbursement. They include, but are not limited to:

i. All other travel expenses such as parking, bridge tolls, public transit, vehicle mileage within the nine Bay Area counties, and travel from Contractor’s home office to SFPUC facilities not requested by the SFPUC;

ii. Routine travel from Contractor’s home office to SFPUC facilities or to Moccasin;

- iii. Contractor staff relocation costs;
- iv. Any labor charges or pass-throughs including, but not limited to, administrative and clerical staff time;
- v. Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software, communication devices, and electronic equipment;
- vi. All meals, including refreshments and working lunches with SFPUC staff;
- vii. Equipment to be used by SFPUC staff;
- viii. Ergonomic office equipment; and
- ix. Postage and courier services that are not requested by SFPUC staff.

5. Subcontractor Make-up and Documentation. Second-tier and pass-through subcontracting is prohibited. Additional subcontractors may be added to Contractor's team after obtaining pre-authorization by the SFPUC Contract Manager, Bureau/Division Manager and the Contract Monitoring Division (CMD), as needed.

6. Subcontractor Fees.

- a. Subject to the restrictions in this Section 6;
- b. Shall be subject to written pre-approval by Contractor's liaison with the SFPUC;
- c. Subcontractor administration markup is limited to five percent (5%) of subcontractors' actual labor costs.

7. Retention. Five percent (5%) of each invoice payment will be withheld for each task order. When the work for the task order or defined critical milestones has been completed to the satisfaction of the SFPUC Contract Manager and all work products have been received and approved by the SFPUC Contract Manager, Contractor may request that the retention be released. In lieu of money retention, an irrevocable letter of credit acceptable to the City will be accepted.

8. Invoice Requirements. As part of its contracting obligations, Contractor is required to utilize the City's approved invoicing and time-keeping systems, as specified by the SFPUC project team, for the purposes for which they are intended. Contractor shall not bill the SFPUC to use these systems. Contractor shall not charge SFPUC to send appropriate personnel to user training.

Contractor shall follow the invoicing and supporting documentation instructions as prescribed by the SFPUC.

Invoice Supporting Documentation:

All labor hours must be substantiated by timesheet summaries extracted from Contractor's accounting system. Each timesheet summary shall include the staff person's name, company, dates of the days worked, and the number of hours worked each day.

Mileage ODCs must be accompanied by mileage logs providing the beginning and ending mileage to substantiate the variable portal-to-portal distance and local driving required while performing the work. All other ODCs must be substantiated with copies of original receipts including a brief description for each receipt memorializing the purpose.

CMD Form 7 "Progress Payment Form" must be included with each invoice to identify the participation and amount payable to the subcontractors.

CMD Form 9 "Payment Affidavit" must be submitted within 10 days of receiving payment for each invoice to document the subcontractor's payment by the prime contractor.

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.

Appendix B-1 Fee Schedule

[Insert Proposal Fee Schedule or other schedule of rates/charges]

Instructions

Fee Schedule

In this worksheet, spaces have been provided to include unit cost for each of the cost components. For each cost component listed below, please provide the unit cost associated with each year. The worksheet will total the annualized cost for each of the

1. Cost Components

- Billing and Data Management and Exchange

◇ This would be the monthly, per unit, cost charged for tasks listed in PUC.PRO.0297

- Customer Communications Systems

◇ This would be the monthly, per unit, cost charged to complete the tasks listed in PUC.PRO.0297

- As-needed Requests

◇ This would be the hourly charge for any work not outlined in the scope of Customer Communications Systems or Billing and Data Management and Exchange

2. Units (meters)

- SFPUC has provided the number of meters to consider when calculating the annual cost

3. Cost Period (per month)

- SFPUC has provided the cost period for this fee schedule which is on a per month basis for tasks

outlined within the scope of Customer Communications Systems or Billing and Data Management and

Exchange or on an hourly basis for any as-needed requests

4. Unit Cost

- Here is where bidder will enter the unit cost per meter

See Fee Schedule (demo) tab for examples

Note: If more information is needed, please contact XXXX@sfgwater.org.

SFPUC Customer Administrative Services for Community Choice Aggregation

Service Costs Per Meter (provide per meter and annual amounts for length of contract term proposed)
(include additional line items as needed for clarity)

Cost Component	Units (meters)	Cost Period (per month)	2024		2025		2026		2027		2028		Total
			Unit Cost	Annual Cost	Unit Cost	Annual Cost	Unit Cost	Annual Cost	Unit Cost	Annual Cost	Unit Cost	Annual Cost	
Billing and Data Management and Exchange	395,000	per month	\$0.25	\$1,185,000.00	\$0.26	\$1,232,400.00	\$0.27	\$1,279,800.00	\$0.28	\$1,327,200.00	\$0.29	\$1,374,600.00	\$6,399,001.10
Customer Communications Systems	395,000	per month	\$0.75	\$3,555,000.00	\$0.76	\$3,602,400.00	\$0.77	\$3,649,800.00	\$0.78	\$3,697,200.00	\$0.79	\$3,744,600.00	\$18,249,003.10
As-needed Requests	Time and Materials	per hour	\$220.00										
Total Cost Per Year				\$4,740,000.00	\$1.02	\$4,834,800.00	\$1.04	\$4,929,600.00	\$1.06	\$5,024,400.00	\$1.08	\$5,119,200.00	\$24,648,004.20

CITY & COUNTY OF SAN FRANCISCO CONTRACT MONITORING DIVISION



CMD ATTACHMENT 2

Requirements for Architecture, Engineering, & Professional Services Contracts

**For Contracts equal or greater than 50% of the Minimum Competitive Amount
and that are Advertised on or after July 1, 2022**

PART I. GENERAL

1.01 SAN FRANCISCO ADMINISTRATIVE CODE CHAPTERS 12B AND 14B

- A. To be eligible for this contract award, Proposers must agree to comply with the Local Business Enterprise ("LBE") requirements sanctioned by San Francisco Administrative Code Chapter 12B, Section 12B.4 and Chapter 14B, and its implementing Rules and Regulations. Chapters 12B and 14B are administered and monitored by the San Francisco Contract Monitoring Division ("CMD").
- B. Chapters 12B and 14B and their implementing Rules and Regulations are incorporated by reference herein as though fully set forth and provide that the failure of any Proposer or Consultant to comply in good faith with these requirements shall be deemed a material breach of contract. Copies of both Chapters 12B and 14B and their implementing Rules and Regulations are available on the CMD website at <http://www.sfgov.org/cmd>.
- C. Chapter 14B allows for a rating discount, referred to in this Attachment 2 as a "rating bonus," for CMD certified firms, subject to certain limitations and exceptions. The Certification Application is available on the CMD website at <http://www.sfgov.org/cmd>.

IMPORTANT NOTICE: In this CMD Attachment 2, the term "LBE" refers to only San Francisco ("SF") CMD Certified LBEs and NPEs and, therefore, does not include PUC-LBEs.

*For assistance with this CMD Attachment and/or assistance
with the Equal Benefits Program, please contact the CMD Main
Office at (415) 581-2310*



1.02 SUBMISSION OF CMD FORMS – PRE-AWARD

- A. **Unless otherwise authorized** by CMD, the Proposer must submit the following CMD forms with the proposal. Failure to complete or submit any of the CMD Forms may cause the proposal to be deemed non-responsive and ineligible for contract award. Proposers are responsible for reviewing the specific instructions and requirements on each CMD form.
1. **Form 2A: CMD Contract Participation Form:** Identify LBE subconsultants, vendors, and lower tier subconsultants that the proposal relies on to meet the LBE sub participation requirement(s). If seeking a rating bonus as an LBE Proposer or LBE Joint Venture (“JV”), check the appropriate box under Rating Bonus. Please see Part III for further information. Proposer entering “To Be Determined” (“TBD”) instead of a specific dollar amount/percentage may lead to a non-responsive proposal. LBE Proposers and LBE subs must be certified as LBEs on the proposal due date to qualify for the rating bonus or to qualify to meet the LBE sub participation requirement(s). The RFP/RFP will state which LBE size category (e.g., Micro, Small, and/or SBA-LBE) can be used to meet the LBE sub participation requirement(s). Any Proposer or sub who is in the process of appealing the Director’s denial of certification or revocation of certification shall not be considered an LBE.
 2. **Form 2B: CMD “Good Faith Efforts” Requirements Form:** This form must be submitted for every solicitation that requires LBE sub participation. Proposer shall meet the specified LBE sub participation requirement(s) and shall complete and submit Form 2B in accordance with Form 2B instructions. Failure to meet the LBE sub participation requirement(s) AND demonstrate/document adequate good faith efforts shall cause the proposal to be determined non-responsive and rejected. Please see Part IV for further information. Proposers are required to sign this form under penalty of perjury.
 3. **Form 3: CMD Compliance Affidavit:** Must be signed by the Proposer under penalty of perjury.
 4. **Form 4: CMD Joint Venture Form:** Submit ONLY if the Proposer is requesting a rating bonus based on LBE participation in a Joint Venture partnership.
 5. **Form 5: CMD Employment Form:** List the key personnel and responsibilities of the Proposer, Joint Venture partners, and Subconsultants.

1.03 CMD LBE CONTRACT PERFORMANCE FORMS—POST AWARD

A. LBE Utilization Tracking

1. **FORM 7: CMD Progress Payment Form:** The Proposer awarded the Contract shall submit online using the Contract Awarding Authority’s City approved system with each payment request. Failure to upload this information with each payment request may delay progress payment processing. For any Other Direct Costs (“ODC”) or direct reimbursable expenses/items, CMD will review and determine whether it is eligible for LBE sub participation credit.
 2. **FORM 9: CMD Payment Affidavit:** Following receipt of each progress payment from the Contract Awarding Authority, a Form 9 (or the information on Form 9) must be submitted online using the Contract Awarding Authority’s City approved system with the next progress payment request. Subconsultants are then required to acknowledge payment from Contractor/Consultant online using the Contract Awarding Authority’s City approved system. Failure to submit required information may lead to withholding of progress payment, even if there are no subcontractor/subconsultant payments for the reporting period.
- B. **FORM 8: CMD Exit Report and Affidavit:** Submit with final Form 7. A separate Form 8 must be completed for each LBE subconsultant and supplier (including lower-tier subs & suppliers).



- C. **FORM 10: CMD Contract Modification Form:** This form shall be completed by the Prime Consultant when any (all) amendments, modifications, or supplemental change orders cumulatively increase the original contract amount by more than 20%, and then for all subsequent amendments, modifications or change orders that cumulatively increase the last CMD approved value by 20%.
- D. Failure to submit all required information under Section 1.03 as specified by the City may result in sanctions under Chapter 14B, including but not limited to, withholding of progress and final payments.

PART II. RATING BONUS

2.01 APPLICATION

A. General

Eligibility for the LBE rating bonus: CMD certified Micro, Small, and SBA-LBEs, including certified non-profit organizations, are eligible for an LBE rating bonus (as applicable under Section 14B.7 of the Ordinance) if the LBE is CMD certified in the type of work that is specified for the Proposer by the Contract Awarding Authority. A Proposer that has a certification application pending, that has been denied certification, that has had its certification revoked or that is in the process of appealing a CMD denial or revocation at the date and time the proposal is due IS NOT an LBE and IS NOT eligible to receive the rating bonus even if the firm is later certified or ultimately prevails in its appeal. Contract Awarding Authorities shall apply these rating bonuses to each evaluation stage of the selection process, as applicable.

The rating bonus provided under Section 2.01 can be combined with each other. A Proposer may receive up to a maximum rating bonus of 13% depending on the particular application listed below.

A Proposer may only claim one rating bonus under each of the following subsections:

- Section 2.01(B) **Standard rating bonus**
- Section 2.01(D) **Prime Neighborhood/Zip Code LBE rating bonus**
- Section 2.01(E) **Subconsulting Neighborhood/Zip Code LBE rating bonus**

Note 1: The RFP/RFQ will clearly state whether the Pilot Neighborhood/Zip Code LBE Program is applicable to the specific project.

Note 2: The Mentor Protégé bid discount/rating bonus, Section 2.01(F), cannot be combined with any of the bid discounts/rating bonuses from Sections 2.01(B) through (E). The Mentor Protégé bid discount/rating bonus is not applicable to professional services contracts. However, for this CMD Attachment 2, the Mentor Protégé bid discount/rating bonus is applicable for Design-Build and/or CM/GC projects only.

B. Application of the **Standard rating bonus** shall be as follows:

1. **Contracts with an Estimated Cost in Excess of \$10,000 and Less Than or Equal to \$400,000.** A 10% rating bonus will apply to any proposals submitted by CMD certified Small or Micro-LBEs. SBA-LBEs are not eligible for a rating bonus OR
2. **Contracts with an Estimated Cost in Excess of \$400,000 and Less Than or Equal to \$10,000,000.** A 10% rating bonus will apply to any proposals submitted by CMD certified Small or Micro-LBEs. If, after the application of the 10% rating bonus to proposals submitted by Small or Micro-LBEs, the highest ranked Proposer is not a Small or Micro-LBE, a 5% rating bonus will be applied to any proposal from an SBA-LBE in accordance with the procedures and limitations set forth in Section 14B.7(E) of the Ordinance OR



3. The rating bonus for a Joint Venture (“JV”) with LBE participation that meets the requirements of Section 2.02 below is as follows for Contracts with an estimated cost of in excess of \$10,000 and Less Than or Equal to \$10,000,000:
 - a. 10% for each JV among Small and/or Micro LBE Proposers.
 - b. 5% for each JV which includes at least 35% (but less than 40%) participation by Small and/or Micro-LBE Proposers.
 - c. 7.5% for each JV that includes 40% or more in participation by Small and/or Micro-LBE proposers.

The rating bonus will be applied by adding 5%, 7.5%, or 10% (as applicable) to the score of each firm eligible for a bonus for purposes of determining the highest ranked firm. Pursuant to Section 14B.7(F) of the Ordinance, SBA-LBEs are not eligible for the rating bonus when joint venturing with a non LBE firm. However, if the SBA-LBE joint ventures with a Micro-LBE or a Small-LBE, the Joint Venture will be entitled to the Joint Venture rating bonus only to the extent of the Micro-LBE or Small-LBE participation described in Section 2.01(B)(3)(b) and (c) above. The LBE JV rating bonuses do not apply to DESIGN-BUILD AND CM/GC Contracts OR

4. **Contracts with an Estimated Cost in Excess of \$10,000,000 and Less Than or Equal to \$20,000,000.** A 2% rating bonus will apply to any proposal submitted by a Small, Micro, or SBA-LBE OR
5. **Contracts with an Estimated Cost In Excess of \$20,000,000.** The rating bonus for LBEs does not apply to Contracts estimated by the Contract Awarding Authority to exceed \$20,000,000.
6. Rating bonus is not applicable to Contracts awarded by private non-profit agencies, regardless of whether or not government funding is involved, or whether or not the firms competing for Contracts are for-profit businesses.

C. Pilot Neighborhood/Zip Code LBE Program

This pilot program is a hyper-local preference program that is to encourage participation by neighborhood businesses on City public works projects located in their neighborhood. This program may apply to Administrative Code Chapter 6 Contracts for projects located within the jurisdictional boundary of San Francisco estimated to cost in excess of \$10,000 and less than or equal to \$10,000,000. The RFP/RFQ will clearly state whether the Pilot Neighborhood/Zip Code LBE Program is applicable to the specific project. The Pilot Neighborhood/Zip Code LBE Program bid discount/rating bonus does not apply for Contracts estimated by the Contract Awarding Authority to exceed \$10,000,000. The program shall not apply to Job Order Contracts (JOC), As-Needed Contracts, or other Contracts where no specific project location is specified at the time of proposal.

The program preferences shall be available to LBEs who meet one or both of the following criteria:

1. Neighborhood LBE. A “Neighborhood LBE” means a certified Small or Micro-LBE whose principal place of business is located in the same Neighborhood as the Neighborhood in which the project is located, where “Neighborhood” is defined as any one of the 11 Supervisorial Districts as defined and established in the San Francisco Charter, Appendix E at time of proposal. In order to facilitate this, the Contract Awarding Authority is required to identify the specific address/Neighborhood(s) where the project will be located on all RFQ/RFPs, and contract documents.



2. Project Zip Code LBE. A "Project Zip Code LBE" means a certified Small or Micro-LBE whose principal place of business is located in the same zip code as the zip code in which the project is located; In order to facilitate this, the Contract Awarding Authority is required to identify the specific address/Neighborhood(s) where the project will be located on all RFQ/RFPs, and contract documents.
- D. Application of the **Prime Neighborhood/Zip Code LBE rating bonus:**
1. A 1% rating bonus to proposals from a Neighborhood LBE (or a JV where the Neighborhood LBE JV partner(s)' participation is at least 40%) when proposing on a Contract where the project is located in the same Neighborhood as the Neighborhood LBE's principal place of business OR
 2. A 1.5% rating bonus to proposals from a Project Zip Code LBE (or a JV where the Project Zip Code LBE JV partner(s)' participation is at least 40%) when proposing on a Contract where the project is located in the same zip code as the Project Zip Code LBE's principal place of business.
- E. Application of the **Subconsulting Neighborhood/Zip Code LBE rating bonus:**
1. A 0.5% rating bonus to proposals from any Proposer if the LBE sub participation in the submitted proposal includes participation by Neighborhood LBEs of at least 50% of the sum of all the LBE sub participation requirement(s) OR
 2. A 1.5% rating bonus to proposals from any Proposer if the LBE sub participation in the submitted proposal includes participation by Zip Code LBEs of at least 50% of the sum of all the LBE sub participation requirement(s).
- F. Application of the **Mentor Protégé bid discount/rating bonus for Design-Build or CM/GC contracts only:**
- For Design-Build or CM/GC contracts, a 1% bid discount/rating bonus to Bids from any Proposer who has been deemed by CMD to qualify for the bid discount/rating bonus. The bid discount/rating bonus shall not exceed \$300,000 and will not be applied if it results in an LBE losing status as the apparent low Bidder or highest ranked Proposer.

2.02 JOINT VENTURE/PRIME ASSOCIATION

- A. Each Small and/or Micro-LBE Joint Venture partner must be responsible for a clearly defined portion of the work to be performed. The rating bonus is applied only when the Small and/or Micro-LBE partner has sufficient skill, experience, and financial capacity to perform the portion of the work identified for the Small and/or Micro-LBE JV partner. This portion must be set forth in detail separately from the work to be performed by the non-LBE JV partner. Each JV partner must meet the minimum qualifications listed for the Prime or Joint Venture partner as outlined in the Bid/proposal. Each Joint Venture partner must be listed to perform Prime Level Work and each JV partner must possess the license required by the RFP (if applicable). The LBE partner(s) must be CMD LBE certified in that area that they are listed to perform in order to be eligible for the rating bonus. The Joint Venture partners must be jointly responsible for the overall project management, control, and compliance with Chapter 14B requirements.
1. The Small and/or Micro-LBE JV partner's work must be assigned a commercially significant dollar value of the prime work and use its own employees and equipment.
 2. Each member of the Joint Venture must perform a "Commercially Useful Function" as that term is defined by Section 14B.2 of the Ordinance. A Small and/or Micro-LBE JV partner that relies on the resources and personnel of a non-LBE firm will not be deemed to perform a "Commercially Useful Function."
 3. The following actions are prohibited: i) the non-LBE JV partner performing work for the Small and/or Micro-LBE JV partner; ii) leasing of equipment or property by the Small and/or Micro-LBE JV partner from the non-LBE JV partner; and iii) the hiring of the non-LBE JV partner's employees by the Small and/or Micro-LBE JV partner.



4. The Small and/or Micro-LBE JV partner must share in the ownership, control, management and administrative responsibilities, risks, and profit of the JV in direct proportion to its stated level of JV participation.
 5. The Small and/or Micro-LBE JV partner must perform work that is commensurate with its experience.
 6. A JV must submit an executed JV agreement and management plan detailing each JV partner's responsibilities and tasks.
 7. A JV must obtain a Federal ID number for that entity.
 8. A JV must obtain a tax registration certificate from the City Tax Collectors Office for that entity.
- B. A prime association or partnership is considered the same as a Joint Venture and must comply with all the JV requirements stated above.
- C. The proposal items to be performed by the Small and/or Micro-LBE JV partner must be identified separately and all work must be accounted for, including subconsulting work.
- D. The cost of the work to be performed by the Small and/or Micro-LBE JV partners is to be calculated as a percentage of the work to be performed by the Joint Venture partners. The Joint Venture should deduct the amount of work to be performed by subconsultants from its total contract amount. This percentage is used to determine whether or not the Joint Venture is eligible for a rating bonus. **Note that any supportive/subconsulting level work will not be counted towards the eligibility for the Joint Venture rating bonus.**

EXAMPLE:

Step 1. Calculate total JV partner work:

Total Contract Work	=	100%
Percentage of Total Contract Work Performed by Subconsultants	-	40%
Percentage of Total Contract Work Performed by JV partners	=	60%

Step 2. Calculate Small and/or Micro-LBE JV partner prime level task(s):

	A	B	C
Description of JV Partners' Scopes of Work	JV Partners' Work as a % of the Total Contract	% of Task by Non-LBE JV Partner	% of Task by Small and/or Micro-LBE JV Partner
TASK 1	5%	3%	2%
TASK 2	20%	11%	9%
TASK 3	25%	12.5%	12.5%
TASK 4	10%	6%	4%
<i>TOTAL JV Partner %</i>	<i>60%</i>	<i>32.5%</i>	<i>27.5%</i>

Step 3. Calculate Small and/or Micro-LBE JV partner work as a percentage of the total JV partner work for the rating bonus.

Total Small and/or Micro- LBE JV %	27.5%	÷	Total JV %	60%	=	45.8%
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The Small and/or Micro-LBE JV partner's participation is 45.8%. The JV is therefore eligible for a 7.5% rating bonus.



PART III LBE SUBCONTRACTOR/SUBCONSULTANT ("SUB") PARTICIPATION

3.01 LBE SUB PARTICIPATION REQUIREMENT(S)

A. General

All proposers shall achieve the LBE sub participation requirement(s) and undertake adequate good faith outreach as set forth in Section 14B.8 of the Ordinance to select subconsultants to meet the LBE sub participation requirement(s). The RFP/RFQ will state which LBE size category (e.g., Micro, Small, and/or SBA-LBE) can be used to meet the LBE sub participation requirement(s). A Proposer's failure to achieve their respective LBE sub participation requirement(s) shall subject the Proposer to sanctions as described in Section 14B.17 of the Ordinance. For a directory of certified LBEs, please go to: <http://www.sfgov.org/cmd>.

Proposals that do not meet the LBE sub participation requirement(s) set under Section 14B.8(A) of the Ordinance will be rejected as non-responsive pursuant to Chapter 14B and its accompanying Rules and Regulations.

1. Proposers must identify on Form 2A the particular LBE subconsultants and lower tier subconsultants to be utilized in performing the Contract, specify for each the percentage of participation, the type of work to be performed and such information as the CMD reasonably shall require to determine the responsiveness of the proposal. For a Proposer to receive LBE sub participation credit towards the LBE sub participation requirement(s), a listed LBE subconsultant must be CMD certified in the scopes of services/disciplines specified on Form 2A. Additionally, a sub(s) may be listed by more than one Proposer.
2. A Proposer must contact an LBE before listing that LBE as a subconsultant in the proposal. A proposal that fails to comply with this requirement will not receive LBE sub participation credit for the referenced LBE. LBEs must be certified with CMD on the proposal due date to receive LBE sub participation credit.
3. Proposers are responsible for verifying the LBE status of a sub prior to submitting a proposal. A subconsultant that has a certification application pending, that has been denied certification, that has had its certification revoked or that is in the process of appealing a CMD denial or revocation at the date and time the proposal is due is not an LBE and cannot be counted as an LBE for purposes of achieving LBE sub participation requirement(s) even if the firm is later certified or ultimately prevails in its appeal.
4. CMD may require the successful Proposer to submit performance reports (e.g., Form 7, etc.) on actual LBE participation at 30%, 50%, 70%, and 90% completion to the Contracting Awarding Authority and CMD.

B. Determination and Calculation of LBE Subcontractor/Subconsultant Participation

General Rules and Commercially Useful Function

1. All LBE Proposers/JVs with LBE participation must meet the LBE sub requirement(s). Any LBE Proposer/JV with LBE participation may not count its participation towards meeting the LBE sub participation requirement(s). An SBA-LBE Proposer may not count its participation towards the LBE sub participation requirement(s).
2. If a Proposer owns or controls more than one business that is CMD certified as an LBE, the Proposer will not receive LBE sub participation credit if it lists its other firms to meet the LBE sub participation requirement(s) when submitting as a Proposer. In determining ownership of a business, a business owned by Proposer's spouse or domestic partner shall be deemed to be owned by the Proposer.
3. For a Proposer to receive LBE sub participation credit towards the LBE sub participation requirement(s), a listed LBE sub must be CMD certified in the scopes of services/discipline(s)



listed on Form 2A. The LBE sub shall be listed to perform task(s), which is described in the RFP or RFQ.

4. The LBE subconsultant must be utilized on the Contract to perform a Commercially Useful Function. An LBE sub performs a Commercially Useful Function if it is directly responsible for providing the materials, equipment, supplies or services to the project as required by the RFP/RFQ or contract documents. To perform a Commercially Useful Function, an LBE sub must be solely responsible for execution of a distinct element of the contract work, and must actually perform, manage, and supervise the work involved in accordance with normal industry practice.
5. To determine whether an LBE sub is performing a Commercially Useful Function, the CMD will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing and the LBE credit claimed for its performance of the work, and other relevant factors. What constitutes a Commercially Useful Function will vary depending on the type of LBE sub.
6. An LBE sub does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of LBE participation. In determining whether an LBE is such an extra participant, the CMD will examine similar transactions and determine whether or not non-LBEs would normally participate in such transactions. No LBE sub participation credit will be given for an LBE that serves as a pass-through.
7. If the LBE subconsultant forms a Joint Venture with a non-LBE subconsultant, the LBE subconsultant Joint Venture partner will be credited only for its portion of the work, as follows:

EXAMPLE:

If the total subcontract amount = \$ 1,000,000 of which

\$510,000 is the LBE JV subcontract amount and \$490,000 is the non-LBE subcontract amount, then \$510,000 is credited toward the LBE sub participation requirement(s).

8. Only the dollar amount of work to be performed by the LBE sub will be credited toward meeting the LBE sub participation requirement(s).

EXAMPLE: Proposer lists an LBE sub for \$1,000,000, but the LBE sub will perform \$510,000 of that amount. The remaining \$490,000 will be further subbed out to a lower-tier non-LBE sub. Only \$510,000 will be credited toward the LBE sub participation requirement(s).

9. All work done by lower-tier LBE subconsultants will be credited toward meeting the LBE sub participation requirement(s).

EXAMPLE: A non-LBE sub is listed for \$1,000,000 and will perform \$800,000 of that amount. The remaining \$200,000 will be further subbed out to a lower-tier LBE sub. Only \$200,000 will be credited toward the LBE sub participation requirement(s), provided that the lower-tier LBE sub was listed on Form 2A at the time of proposal.

3.02 SUBSTITUTION, REMOVAL, OR CONTRACT MODIFICATION OF LBE

No LBE subconsultant, supplier or vendor listed on Form 2A shall be substituted, removed from the Contract or have its Contract, purchase order or other form of agreement modified in any way without prior CMD approval. Consultant must conduct good faith efforts to replace an LBE sub with another LBE sub to comply with the LBE sub participation requirement(s). Additionally, no new subconsultants shall be added without prior CMD approval.



PART IV “GOOD FAITH EFFORTS” REQUIREMENTS

All proposers shall undertake adequate good faith efforts as set forth in Section 14B.8 of the Ordinance.

Under Section 14B.8(C) of the Ordinance, proposals that do not meet the LBE sub participation requirement(s) will be rejected as non-responsive pursuant to Chapter 14B and its accompanying Rules and Regulations.

Proposers must perform at least one of the three good faith efforts approaches outlined on Form 2B (35% Approach, Inclusion of Micro-LBE Approach and/or the Good Faith Negotiation(s) Approach). Note: A Proposer may be waived from the good faith efforts if it has been deemed by CMD to have met the requirements in the Mentor Protégé Program. A Proposer shall provide the CMD proof of eligibility.

The instructions for the Inclusion of Micro-LBE Approach and the Good Faith Negotiation(s) Approach are clearly outlined on Form 2B. Proposer must submit all good faith documentation as specified on Form 2B. For the 35% Approach listed above, if a Proposer demonstrates in its Proposal that it exceeds the sum of all the established LBE sub participation requirement(s) by 35% or more, such Proposer is not required to conduct the other good faith efforts approaches.

Example: The sum of all the LBE sub participation requirement(s) is 10%. Good faith efforts requirements will be met if the Proposer:

- 1) Meets the LBE sub participation requirement(s); **AND**
- 2) Has a total LBE participation that equals or exceeds 13.5% of the total proposal amount. The 13.5% represents the 10% LBE sub participation requirement plus 35% of that 10% sub participation requirement.

The sum of all LBE sub participation requirement(s) set for the project:	10.0%
35% of the 10% LBE sub participation requirement(s):	3.5%
Total LBE participation must equal or exceed:	13.5%

A Small or Micro-LBE Bidder/Proposer may count its own contract work toward the 35% good faith outreach exception portion, but may not count its own contract work toward the LBE sub participation requirement portion. An SBA-LBE Bidder/Proposer may not count its own contract work towards the LBE sub participation requirement portion or the 35% good faith outreach exception portion. SBA-LBE subs may count towards the 35% good faith outreach exception portion if the Director permitted Bidders/Proposers to list SBA-LBE firms to satisfy the LBE sub participation requirement.

PART V NON-COMPLIANCE AND SANCTIONS

A. Non-Compliance with Chapter 14B

1. A complaint of non-compliance concerning LBE participation initiated by any party after contract award will be processed in accordance with Chapter 14B and its implementing Rules and Regulations.
 - a. If the CMD Director determines that there is cause to believe that a Consultant has failed to comply with any of the requirements of the Chapter 14B, CMD Rules and Regulations, or contract provisions pertaining to LBE participation, the CMD Director shall notify the Contract Awarding Authority and attempt to resolve the non-compliance through conference and conciliation.



- b. If the non-compliance is not resolved through conference and conciliation, the CMD Director shall conduct an investigation and, where the Director so finds, issue a written Finding of Non-Compliance.
 - c. The Director's finding shall indicate whether the Consultant acted in good faith or whether noncompliance was based on bad faith noncompliance with the requirements of Chapter 14B, CMD Rules and Regulations, or contract provisions pertaining to LBE participation.
 2. Where the Director finds that the Consultant acted in good faith, after affording the Consultant notice and an opportunity to be heard, the Director shall recommend that the Contract Awarding Authority take appropriate action. Where the Director finds bad faith noncompliance, the Director shall impose sanctions for each violation of the Ordinance, CMD Rules and Regulations, or contract provisions pertaining to LBE participation, which may include:
 - a. Issuing an Order of Debarment prohibiting the Consultant and affiliates from participating in City Contracting for a period not to exceed five years and terminating any existing Contracts or Subcontracts with the debarred Consultant, in accordance with the Administrative Debarment provisions and procedures set forth in Administrative Code Chapter 28.
 - b. Determining that the Consultant has failed to comply with the provisions of Chapter 14B, sanctions are as follows:
 - i) suspend a Contract;
 - ii) withhold funds;
 - iii) assess penalties;
 - iv) debarment;
 - v) revoke CMD certification; or
 - vi) pursuant to 14B.7(H)(2) of the Ordinance, assess liquidated damages in an amount up to 25% of the total amount of the Contract or subcontract, as applicable, or \$1,000, whichever is greatest as determined by CMD.
 3. The Director's determination of non-compliance is subject to appeal to the City Administrator pursuant to CMD Rules and Regulations.
 4. An appeal by a Consultant to the City Administrator shall not stay the Director's findings.
 5. The CMD Director may require such reports, information and documentation from Consultants, subconsultants, Contract Awarding Authorities, and heads of departments, divisions, and offices of the City and County as are reasonably necessary to determine compliance with the requirements of Chapter 14B.

B. Procedure for the collection of penalties is as follows:

1. The CMD Director shall send a written notice to the Controller, the Mayor and to all Contract Awarding Authorities or City and County department officials overseeing any Contract with the Consultant that a determination of non-compliance has been made and that all payments due the Consultant shall be withheld.
2. The CMD Director shall transmit a report to the Controller and other applicable City departments to ensure that the liquidated damages are paid to the City.

**FORM 2A: CMD CONTRACT PARTICIPATION FORM**

Section 1: This form must be submitted with the proposal or the proposal may be deemed non-responsive and rejected. Proposer, each Joint Venture partner, Subconsultants, Vendors, and lower sub tiers must be listed on this form. The RFP/RFQ will state which LBE size category (e.g., Micro, Small, and/or SBA-LBE) can be used to meet the LBE sub participation requirement(s). All LBE Proposers/JVs with LBE participation must meet the LBE sub participation requirement(s). Any LBE Proposer/JV with LBE participation may not count its participation towards meeting the LBE sub participation requirement(s). Be sure to check the appropriate box for Rating Bonus under Section 2. If more space is needed for Section 1, attach additional copies of this form.

Contract No.:		
Contract Title:		LBE SUBPARTICIPATION REQUIREMENT(S)
Firm:		<input type="checkbox"/> Micro and Small-LBE Sub Requirement - ____%
Contact Person:		<input type="checkbox"/> Micro, Small, SBA-LBE Sub Requirement - ____%
Address:		<input type="checkbox"/> Micro-LBE Sub Requirement - ____%
City/ZIP:		<input type="checkbox"/> Small-LBE Sub Requirement - ____%
Phone, Email:		<input type="checkbox"/> SBA-LBE Sub Requirement - ____%

***Type: Identify if Prime (P), JV partner (J), Subconsultant (S), or Vendor (V)**

TYPE *	Firm	Portion of Work (Describe Scope(s) of Work)	% of Work	Indicate LBE or Non-LBE. If LBE, identify MBE, WBE, or OBE; AND Micro, Small, or SBA.	% of LBE Subwork (Carry-Over from % OF Work Column)		
					Micro	Small	SBA
			%		%	%	%
			%		%	%	%
			%		%	%	%
			%		%	%	%
		Total % of Work:	100%	Total LBE Sub Participation:	%	%	%

I declare, under penalty of perjury under the laws of the State of California, that I am utilizing the above Consultants for the portions of work and amounts as reflected in the proposal for this Contract.

Owner/Authorized Representative (Signature): _____ Date: _____

Print Name and Title: _____

** MBE = Minority Business Enterprise, WBE = Women Business Enterprise, OBE = Other Business Enterprise.
See CMD website: <http://www.sfgov.org/cmd> for each firm's status



Section 2. Rating Bonus

Check applicable boxes.

- A. ☐ **NO Rating Bonus Requested 0%**
- B. **Contracts with an Estimated Cost in Excess of \$400,000 and Less Than or Equal to \$10,000,000. See instructions in Sections 2.01 and 2.02.**
- ☐ **Micro or Small-LBE 10%**
- ☐ **Joint Venture 7.5%**
- ☐ **Joint Venture 5%**
- ☐ **Joint Venture (Micro or Small-LBEs only) 10%**
- ☐ **SBA-LBE 5%**
- C. **Contracts with an Estimated Cost in Excess of \$10,000 and Less Than or Equal to \$10,000,000. The below rating bonuses DO NOT apply to Chapter 21 contracts and only apply to Chapter 6 contracts, including Chapter 6.40. See instructions in Section 2.01 for details. This Neighborhood/Zip Code LBE Program shall apply to projects located within the jurisdictional boundary of San Francisco. The program shall not apply to Job Order Contracts (JOC), As-Needed contracts, or other contracts where no specific project location is specified at the time of proposal. The RFP/RFQ will clearly state whether the Pilot Neighborhood/Zip Code LBE Program is applicable to the specific project. A Proposer may receive up to a maximum rating bonus of 13% depending on the particular application.**

Prime Neighborhood/Zip Code LBE rating bonus:

- ☐ **Prime Neighborhood LBE (or a JV where the Neighborhood LBE JV partner(s)' participation is at least 40%) 1%**

OR

- ☐ **Prime Zip Code LBE (or a JV where the Prime Zip Code LBE JV partner(s)' participation is at least 40%) 1.5%**

Subconsulting Neighborhood/Zip Code LBE rating bonus:

- ☐ **Sub Neighborhood LBE 0.5%**

OR

- ☐ **Sub Zip Code LBE 1.5%**

- D. **Contracts in Excess of \$10,000,000 and Less Than or Equal to \$20,000,000. See instructions in Section 2.01.**
- ☐ **Micro, Small, or SBA-LBE 2%**
- E. **Mentor-Protégé Program Bid Discount/Rating Bonus. The Mentor Protégé rating bonus is not applicable to professional services contracts. However, for this CMD Attachment 2, the Mentor Protégé rating bonus/bid discount is applicable for Design-Build and/or CM/GC projects only. See instructions in Section 2.01.**
- ☐ **Mentors of the Mentor-Protégé Program 1%**



Section 3. Proposer, Joint Venture Partners, Subconsultant, and Vendor Information

Provide information for each firm listed in Section 1 of this form. Firms which have previously worked on City contracts may already have a vendor number. Vendor numbers of LBE firms are located on the CMD LBE website at <http://www.sfgov.org/cmd>. Use additional sheets if necessary.

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	EMAIL:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	EMAIL:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	EMAIL:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	EMAIL:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	EMAIL:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	EMAIL:	_____



FORM 2B: “GOOD FAITH EFFORTS” REQUIREMENTS FORM

This “Good Faith Efforts” form, along with the required supporting documentation, must be completed and submitted per the instructions in this form, EVEN IF the LBE subcontracting/subconsulting participation requirement has been met (Section 14B.8 of the San Francisco Administrative Code). At the time of bid/proposal, Bidders/Proposers must submit this form along with its Bid/Proposal to be responsive. Failure to fulfill at least one of the three different approaches below may deem the Bid/Proposal nonresponsive.

To assist Bidders/Proposers with outreach to LBEs, the CMD website has a directory of certified LBEs:
<https://sfgov.org/cmd/>.

Choose one of the three approaches listed below on this form. Approaches B and C require submittal of supporting documentation.

☐ Approach A - 35% Approach

This approach is codified in Section 14B.8 of the San Francisco Administrative Code.

Under Approach A, a Bidder/Proposer must demonstrate that the total LBE participation requirement established for this project will be exceeded by at least 35%. This approach is illustrated in this CMD Attachment under Part IV.

- If a Contract has *separate* LBE sub participation requirements, the Bidder/Proposer must exceed by at least 35% the total sum of all the LBE sub participation requirements.
- A Small or Micro-LBE Prime Bidder/Proposer may not count its own contract work toward the LBE sub participation requirement portion, but may count its own contract work for the portion that exceeds the LBE sub participation requirement (i.e., 35% good faith outreach exception portion).
- An SBA-LBE Prime Bidder/Proposer may not count its own contract work towards the LBE sub participation requirement portion or the 35% good faith outreach exception portion.
- An SBA-LBE sub may count its participation towards the 35% good faith outreach exception portion if the Contract Monitoring Division Director permitted Bidders/Proposers to list SBA-LBE firms to satisfy the LBE sub participation requirement.

Select the boxes that apply:

Does your Bid/Proposal demonstrate that you have exceeded the established LBE sub participation requirement(s) by 35% or more in accordance with Section 14B.8(B)? ☐ YES ☐ NO

- ☐ I am a Small or Micro-LBE Prime Bidder/Proposer. I have listed LBE subs on Section 00 43 36/Form 2A/equivalent form to meet the established LBE sub participation requirement(s). I am relying on self-performed contract work to meet the 35% good faith outreach approach. Below is the total value of contract work I will perform with my own forces:

Percent (%) or Amount (\$) of Work: _____

- ☐ I am NOT a Small or Micro-LBE Bidder/Proposer. I have demonstrated on Section 00 43 36/Form 2A/equivalent form that the proposed LBE sub participation exceeds the sum of the established LBE sub participation requirements by at least 35%.

☐ Approach B - Inclusion of Micro-LBE



This approach establishes that the Prime is utilizing Micro-LBEs on their projects.

Under Approach B, the Bidder's/Proposer's good faith efforts must be demonstrated by listing a different Micro-LBE subcontractor/subconsultant on this Bid or Proposal than they have listed in the last five (5) most recently awarded CCSF Contracts with LBE sub participation requirements.

- A Prime Bidder/Proposer that has been awarded at least five (5) CCSF Contracts at the time of the current Bid/Proposal must list at least one (1) Micro-LBE firm on its team that the Prime Bidder/Proposer has not listed on its last five (5) most recently awarded CCSF Contracts.
- A Prime Bidder/Proposer that has been awarded four (4) or less CCSF Contracts at the time of the current Bid/Proposal must list at least one (1) Micro-LBE firm on its team that the Prime Bidder/Proposer has not listed on any of its previously awarded CCSF Contracts and must indicate below the number of CCSF Contracts that it has been previously awarded.

Enter exact number of CCSF awarded Contracts: _____

- If there are separate LBE sub participation requirements on this Bid/Proposal, the Prime Bidder/Proposer is only required to list at least one Micro-LBE on its team to meet the "Good Faith Efforts" requirement.
- A Prime Bidder/Proposer that has never listed a Micro-LBE sub on any of its CCSF awarded Contracts or that has never bid on a CCSF Contract, may also utilize this approach.

A Bidder/Proposer must list the last five (5) most recently awarded CCSF Contracts below. If a Bidder/Proposer has four (4) or less CCSF awarded Contracts, it must list below all of its CCSF awarded Contracts. This includes Contracts where the Bidder/Proposer received a notification of award, even if work has not begun or if the Contract is not yet complete.

- CCSF Contracts that do not have an LBE sub participation requirement are excluded from this approach.
- Contracts where a Micro-LBE was utilized for a substitution, firm addition, or a trade package for CM/GC or DB projects are excluded from this approach.

Contract Awarding Department	Contract Title	Contract Number	Contract Awarding Department's Award Date
1.			
2.			
3.			
4.			
5.			

Bidder/Proposer must submit the following supporting documents for verification purposes; failure to submit this documentation may result in the Bid/Proposal found non-responsive:



- For each of the Contracts listed above, the Prime Bidder/Proposer must include Section 00 43 36/CMD Form 2A/equivalent form submitted to the Contract Awarding Department.
- The Section 00 43 36, CMD Form 2A, or equivalent form must indicate the Contract Awarding Department, the Project Title and the Contract Number.

The Micro-LBE sub listed for Approach B must sign below. By signing below, the Micro-LBE is verifying that it has not been utilized on the Prime Bidder's/Proposal's projects provided above.

Contract Number and Name: _____

Signature of Micro-LBE Owner/Authorized Representative: _____

Micro-LBE Owner/Authorized Representative (Print): _____

Name of Firm (Print): _____

Title and Position: _____

Address, City, ZIP: _____

Telephone/E-mail: _____

Date: _____

☐ **Approach C - Good Faith Negotiation(s)**

This approach awards points for negotiating with LBEs in good faith.

Under Approach C, the Bidder's/Proposer's good faith outreach will be evaluated based on the entire team listed for the contract, even if the contract includes separate LBE sub participation requirement(s).

- A Bidder/Proposer must achieve at least 50 points with any combination of Items #1 through #3 below, as determined by CMD, to be deemed compliant with the "good faith outreach" requirements. A Bidder/Proposer who fails to achieve at least 50 points will be declared nonresponsive, and the Bid/Proposal will be rejected. Please check "yes" or "no" for each item listed below. Supporting documentation for Items #1 through #3 below must be submitted with the Bid/Proposal.



<p>1. Did your firm contact CMD certified LBE firms, not less than 10 calendar days prior to the due date of the Bid/Proposal? If so, you must include email documentation showing the date of the contact with your Bid/Proposal to verify that contacts were made timely.</p> <p>The purpose of contacting LBE firms is to provide notice of interest in bidding/proposing for this project. When contacting LBEs, you should provide adequate information about the plans, specifications, and requirements for the work.</p> <p>A Bidder/Proposer will receive 1 point for each LBE firm contacted, not less than 10 calendar days prior to the due date of the Bids/Proposals. The Bidder/Proposer may receive up to a maximum of 10 points for this item. There is no limitation to how many LBE firms a Bidder/Proposer can contact. Where there are fewer than 10 LBE firms available for subcontracting, and CMD has confirmed as such prior to the bid/proposal due date, the bidder/proposer will receive the 10 points as long as all potential LBE firms are contacted.</p> <p>If the City gave public notice of the project less than 15 calendar days prior to the Bid/Proposal due date, the allocation of points above still applies, except that the Bidder/Proposer may contact those LBE firms identified less than 10 calendar days prior to the due date of the Bid/Proposal.</p>	<input type="checkbox"/> Yes (Maximum of 10 points)	<input type="checkbox"/> No (0 points)
<p>2. Did your firm follow-up/negotiate in good faith with interested LBEs? Your follow-up contact(s) with interested LBEs should include, but are not limited to correspondence regarding: the scope of work/services, quotes/billing rates, qualifications and/or expectations; the City's bonding and financial assistance program(s); assistance available to potential LBE subcontractors/subconsultants to properly mobilize; reduction of your firm's pre-qualification standards; etc.</p> <p>The Bidder/Proposer shall submit the following documentation:</p> <ul style="list-style-type: none"> a) Identify each interested LBE firm you are submitting email correspondence/documentation for; b) Copies of <u>ALL</u> email correspondence for each LBE identified for Item #2 (Note that the initial email correspondence from Items #1 above will not count towards the subject Item)—At a minimum, the Bidder/Proposer must include email documentation showing a response to the interested LBE; c) A full and complete statement of the reason(s) why any of the LBE firms identified for Item #2 was not selected for the subject project. <p>For each interested LBE firm that the Bidder/Proposer does follow-up with, the Bidder/Proposer will receive 10 points. There is no maximum amount of points/limitation to how many LBE firms a Bidder/Proposer can correspond with and follow-up/negotiate in good faith.</p> <p>A Bidder/Proposer who does not perform any follow-up contact with interested LBEs will receive zero points for Item #2.</p> <p>* "Interested LBE" shall mean an LBE firm that expresses interest in being a subcontractor/subconsultant/supplier to the Bidder/Proposer for the subject solicitation.</p>	<input type="checkbox"/> Yes (Minimum of 10 points to no Maximum)	<input type="checkbox"/> No (0 points)



<p>3. As part of your Bid/Proposal, did your firm list an LBE identified from Item #2 above?</p> <p>For each LBE that is identified under Item #2 above, the Bidder/Proposer will receive 30 points for listing said LBE for the subject solicitation on the specified sub listing form such as Section 00 43 36/CMD Form 2A/equivalent form.</p> <p>A Bidder/Proposer who does not list any LBEs from Item #2 above for the subject solicitation on Section 00 43 36/CMD Form 2A/equivalent form, will receive zero points for Item #3.</p> <p>The Bidder/Proposer shall submit the following documentation:</p> <ul style="list-style-type: none"> a) Copies of all email correspondence between your firm and the LBE listed for the project, including written bids/quotes; b) A full and complete statement of the reasons for selection of the subcontractor(s)/subconsultant(s)/supplier(s). If the reasons are based on relative qualifications, the statement must address the particular qualification at issue. If the reason is based on the bid/quote amounts, the statement must include the amounts and describe the similarities and/or dissimilarities in the scope of work covered by the bids/quotes. c) Email notification to LBE that it will be listed on Section 00 43 36/CMD Form 2A/equivalent form and include the listed LBE's scope of work and dollar value/percentage. <p>Pursuant to Section 14B.8(E) of the Ordinance, all Bidders/Proposers shall maintain the documentation described under this item for three years following submission of the Bid or completion of the Contract, whichever is later.</p>	<p><input type="checkbox"/> Yes (Minimum of 30 points to no maximum)</p>	<p><input type="checkbox"/> No (0 points)</p>
---	--	---

For Approaches A through C, the Prime Bidder/Proposer declares and swears under penalty of perjury under the laws of the State of California that the foregoing statements/documentation are true and correct and accurately reflect its good faith efforts as required in this CMD Attachment, in Section 14B.8 and the accompanying Chapter 14B's Rules and Regulations.

_____ Owner/Authorized Representative (Signature)		_____ Owner/Authorized Representative (Signature)	
_____ Name (Print) and Title		_____ Name (Print) and Title	
_____ Firm Name		_____ Firm Name	
_____ Telephone	_____ Email	_____ Telephone	_____ Email



FORM 3: CMD COMPLIANCE AFFIDAVIT

1. I will ensure that my firm complies fully with the provisions of Chapter 14B of the San Francisco Administrative Code and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
2. Upon request, I will provide the CMD with copies of Contracts, subcontract agreements, certified payroll records and other documents requested so the HRC and CMD (as applicable) may investigate claims of discrimination or non-compliance with either Chapter 12B or Chapter 14B.
3. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the Contract Monitoring Division shall be payable to the City and County of San Francisco upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any Contract with the City and County of San Francisco.
4. I declare and swear under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

Signature of Owner/Authorized Representative: _____

Owner/Authorized Representative (Print) _____

Name of Firm (Print) _____

Title and Position _____

Address, City, ZIP _____

Federal Employer Identification Number (FEIN): _____

Email _____

Date: _____



FORM 4: CMD JOINT VENTURE FORM

This form must be submitted ONLY if the Proposer is requesting a Joint Venture partnership with a Small and/or Micro- LBE firm for the rating bonus. The Joint Venture partners must submit a Joint Venture agreement and management plan with the proposal. All work must be accounted for including subconsulting work.

1. Name of Contract or Project: _____

2. Name of all JV partners: (Check LBE if applicable)

	LBE <input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>

3. Attach a copy of Joint Venture Agreement and Management plans.

4. The management plan must include the following information:

- Describe in detail how decisions will be made for work distribution and compliance of Small and/or Micro-LBE Joint Venture participation.
- Provide each Joint Venture partner's specific duties and responsibilities (include organizational chart).
- Identify the Location of Joint Venture Office.
- Provide in detail how decision will be made for work distribution to LBE subconsultants and/or vendors.
- Submit copies of bank signature cards with authorized names, titles, and address/city of the bank (required after award of Contract.)

5. Calculation of the Rating Bonus. See §2.02(D) of CMD Attachment 2 for an example.

If the Joint Venture partners are dividing the work according to a different formula than that described below, please contact CMD staff and describe the arrangement in detail prior to submittal of proposal.

Joint venture partners are encouraged to meet with CMD regarding their Joint Venture prior to submitting their proposal.

The rating bonus is awarded based on the Small and/or Micro-LBE JV partner tasks calculated as a percentage of the total JV partner tasks.

Joint Venture partners may be in different industries provided that each Joint Venture partner meets the minimum qualifications in the Bid or proposal, and each is acting as a prime. The LBE Joint Venture partner must perform Prime Level Work and be CMD certified for the scope of work they are proposing to perform in order to be eligible for the rating bonus. "Prime Level Work" means any portion of work that is listed in the prime's minimum qualification section in the RFQ/RFP. Joint Ventures receive rating bonuses depending upon the LBE percentage of prime level participation as set forth in Section 14B.7(F) of the Ordinance. Note that any supportive/subconsulting level work will not be counted towards the eligibility for the Joint Venture rating bonus.



Step 1. Calculate total JV partner tasks.

Total Contract Tasks	=	100%
Percentage of Total Work to be Performed by Subconsultants	-	%
Percentage of JV partner tasks	=	%

Step 2. Calculate Small and/or Micro-LBE JV partner prime level task(s):

	A	B	C
Description of JV Partner Scopes of Work (Specific Details of Work)	JV Partners' Work as a % of the Total Project	% of Task by Non-LBE JV Partner	% of Task by Small and/or Micro-LBE JV Partner
	%	%	%
	%	%	%
	%	%	%
	%	%	%
	%	%	%
TOTAL JV %	%	%	%

Step 3. Calculate Small and/or Micro-LBE JV partner work as a percentage of the total JV partner work for the rating bonus.

Total Small and/or Micro-LBE JV Partner %		÷	Total JV %		=	%
--	--	---	------------	--	---	---

JOINT VENTURE PARTNERS MUST SIGN THIS FORM

Owner/Authorized Representative (Signature) _____

Name (Print) Title

Firm Name

Telephone Email

Date

Owner/Authorized Representative (Signature) _____

Name (Print) Title

Firm Name

Telephone Email

Date



FORM 5: CMD EMPLOYMENT FORM

This form is to be submitted with the proposal.

Indicate key personnel designated to work on this project for the entire project team (Proposer, Joint Venture partners, subconsultants, and vendors).

The employees listed should include all those listed in other sections of the proposal.

NAME OF FIRM	NAME OF EMPLOYEE	PROJECT ROLE	RACE	SEX

Sign below including each Joint Venture partner.

Owner/Authorized Representative (Signature)

Name (Print) Title

Firm Name

Telephone Email

Date

Owner/Authorized Representative (Signature)

Name (Print) Title

Firm Name

Telephone Email

Date



FORM 7: CMD PROGRESS PAYMENT FORM

To be submitted electronically using the Contract Awarding Authority's City approved system.

To be entered by Prime Consultant and submitted to the Contract Awarding Authority and CMD with its monthly progress payment application (transmit to the following):

TO: Resident Engineer or Inspector

COPY: CMD Contract Compliance Officer

FROM: _____

Date: _____

SECTION 1. Fill in all the blanks

Contract Number: _____ Contract Name: _____

Reporting Period From: _____ To: _____ Progress Payment No: _____

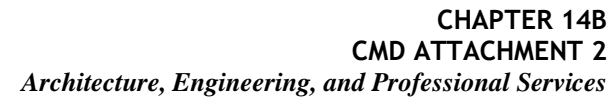
The information submitted on Sections 1 and 2 of this form must be cumulative for the entire Contract as opposed to individual task orders. Additionally, the information submitted on Sections 1 and 2 of this form must be consistent. See next page for Section 2.

- | | |
|---|----------|
| 1. Original Contract Award Amount: | \$ _____ |
| 2. Amount of Amendments and Modifications to Date: | \$ _____ |
| 3. Total Contract to Date including Amendments and Modifications (Line 1 + Line 2): | \$ _____ |
| 4. Amount Invoiced this submittal period: Professional Fees | \$ _____ |
| 5. Amount Invoiced this submittal period: Reimbursable Expenses | \$ _____ |
| 6. Gross Amount Invoiced this submittal period (Line 4 + Line 5): | \$ _____ |
| 7. All Previous Gross Amounts Invoiced: | \$ _____ |
| 8. Total Gross Amounts of Progress Payments Invoiced to Date (Line 6 + Line 7): | \$ _____ |
| 9. Percent Completed (Line 8 ÷ Line 3): | % _____ |

Prime Consultant, including each Joint Venture partner, must sign this form.

_____ Owner/Authorized Representative (Signature)	
_____ Name (Print)	_____ Title
_____ Firm Name	
_____ Telephone	_____ Email
_____ Date	

_____ Owner/Authorized Representative (Signature)	
_____ Name (Print)	_____ Title
_____ Firm Name	
_____ Telephone	_____ Email
_____ Date	



**FORM 9: CMD PAYMENT AFFIDAVIT**

To be submitted electronically using the Contract Awarding Authority's City approved system.

TO: Project Manager/DesigneeCOPY TO: CMD Contract Compliance Officer

Firm: _____

Date: _____

List the following information for each progress payment received from the Contract Awarding Authority. Use additional sheets to include complete payment information for all LBE subs, suppliers, and vendors (including lower tiers utilized on this Contract). Failure to submit all required information may lead to partial withholding of progress payment or final payment.

Contract Number: _____ Contract Name: _____

Contract Awarding Department: _____

Progress Payment No.: _____ Period Ending: _____

Amount Received: \$ _____ Date: _____ Warrant/Check No.: _____

☐ Check box and sign below if there is no sub payment for this reporting period.

Sub/Supplier/Vendor Name	Business Address	Amount Paid	Payment Date	Check Number/ Electronic Transfer Number
		\$		
		\$		
		\$		
		\$		
		\$		

I/We declare, under penalty of perjury under the laws of the State of California that the above information is complete, that the tabulated amounts paid to date are accurate and correct.

Prime Consultant, including each Joint Venture partner, must sign this form (use additional sheets if necessary)

Owner/Authorized Representative (Signature)_____
Owner/Authorized Representative (Signature)_____
Name (Print)_____
Title_____
Name (Print)_____
Title_____
Firm Name_____
Firm Name_____
Telephone_____
Email_____
Telephone_____
Email_____
Date_____
Date



FORM 8: CMD EXIT REPORT AND AFFIDAVIT

Prime Consultant must complete and sign Sections 1 and 4 of this form for each LBE subconsultant/supplier (including each lower tier LBE). All LBEs must complete and sign Sections 2 and 3 of this form. Please be sure to keep a copy of your outreach/delivery efforts (e.g., email, USPS certified mail, etc.) to the LBE sub(s). These forms should be submitted to the Contract Awarding Authority with the final progress payment request if the Contract has an LBE sub participation requirement.

TO: Resident Engineer Inspector

COPY: CMD Contract Compliance Officer

FROM (Contractor): _____

Date Transmitted: _____

SECTION 1.

- ☐ Please check this box if there are no LBE subs for this Contract.
☐ Please check this box if the LBE sub fails to complete and sign this form within 5 business days (see Section 3).

Reporting Date: _____ Contract Name: _____

Name of LBE: _____ Portion of Work (Trade): _____

Original LBE Contract Amount: \$ _____

Change Orders, Amendments, Modifications \$ _____

Final LBE Contract Amount: \$ _____

Amount of Progress Payments Paid to Date: \$ _____

Amount Owning including all Change Orders, Amendments and Modifications \$ _____

Explanation by Prime Consultant if the final contract amount for this LBE is less than the original contract amount:

SECTION 2. Please check one:

- ☐ I did NOT subcontract out ANY portion of our work to another subcontractor.
☐ I DID subcontract out our work to:

Name of Firm: _____	Amount Subcontracted: \$ _____
Name of Firm: _____	Amount Subcontracted: \$ _____

SECTION 3.

To be completed/signed by the LBE subconsultant or vendor:

- ☐ I agree with the above completed Section 1.
☐ I disagree with the above completed Section 1.

If "I disagree" is checked above, please explain. LBE sub must address any discrepancies within 5 business days after it has received this form from the Prime Consultant. If the LBE sub fails to submit the form within 5 business days, the Prime Consultant will note this under Section 1 of this form and submit the form as is with the final progress payment.

Owner/Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone

Email

Date



SECTION 4.

If this form is submitted without the LBE's signature, the Prime Consultant must enclose verification of delivery of this form to the LBE.

I declare, under penalty of perjury under the laws of the State of California, that the information contained in Section 1 of this form is complete, that the tabulated amounts paid to date are accurate and correct, and that the tabulated amounts owing will be paid within three (3) days after receipt of the City's final payment under the Contract.

Owner/Authorized Representative (Signature)

Name (Print) Title

Firm Name

Telephone Email

Date

Owner/Authorized Representative (Signature)

Name (Print) Title

Firm Name

Telephone Email

Date



FORM 10: CMD CONTRACT MODIFICATION FORM

Prime Consultant must submit this form with the required supporting documentation and obtain prior CMD approval when processing amendments, modifications or change orders that cumulatively increase the original contract amount by more than 20%, and then for all subsequent amendments, modifications or change orders that cumulatively increase the last CMD approved value by 20%. This form must be completed prior to the approval of such amendments, modifications or change orders.

Name of Project/Contract Title: _____

Original Contract Amount: _____

Total Contract Amount as Modified to Date: _____

Amount of Current Modification Request: _____

New Total Contract Amount after Current Modification Request: _____

REQUIRED INFORMATION:

1. A list of all prior contract amendments, modifications, supplements and/or change orders leading up to this modification, including those leading up to the amendment which increased the original contract amount by more than 20%. Please list below.

Modification/ Amendment Number	Amount of Modification/ Amendment (If Applicable)	Brief Description of Services/Work

2. A spreadsheet showing each firm's participation for the overall Contract, including each firm's participation to date and proposed participation under the modification.



PROPOSED CONTRACT VALUE WITH NEW MODIFICATION/AMENDMENT

	LBE Commitment(s) at the Time of Bid	LBE Participa- tion To- Date	Projected LBE Commitment(s) Including This Mod/Amend
Micro and Small-LBE	%	%	%
Micro, Small, and SBA-LBE	%	%	%
Micro-LBE	%	%	%
Small-LBE	%	%	%
SBA-LBE	%	%	%
TOTALS	%	%	%

Firm Name	Commitment Made at Time of Bid/Proposal	Dollar Invoiced To-Date	Invoiced % To- Date	Projected Overall Dollar Amount with This Mod/Amend	Projected Overall % with This Mod/Amend
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
	%	\$	%	\$	%
LBE TOTALS:	%	\$	%	\$	%
TOTALS:	%	\$	%	\$	%

3. A brief description of the work to be performed under this amendment, modification, or change order.



4. For any listed LBE that is currently under its commitment or is not projected to meet its committed percentage of overall work, please provide an explanation as to why this is the case.

LBE Firms Falling Short of Commitment or Not Projected to Meet Their Committed Percentage of Work:	Reason

Sign below including each Joint Venture partner.

Owner/Authorized Representative (Signature)

Name (Print) Title

Firm Name

Telephone Email

Date

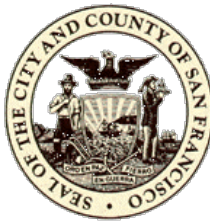
Owner/Authorized Representative (Signature)

Name (Print) Title

Firm Name

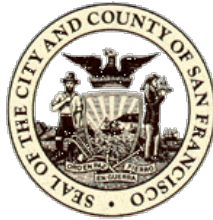
Telephone Email

Date



Chapter 12B Equal Benefits Complete Compliance Guide

1. Chapter 12B Equal Benefits Compliance Guide (2 pages)
2. Submitting An Online 12B Declaration (2 pages)
3. How Benefits Apply To Dependents (1 page)
4. Memorandum to Employees Template (1 page)
5. Chapter 12B Equal Benefits Audit Standards (2 pages)
6. Answers to Common 12B Equal Benefits Questions (1 page)



Chapter 12B Equal Benefits Compliance Guide

THE BASICS

THE DETAILS

<i>The Equal Benefits Ordinance</i>	<p>San Francisco Administrative Code Chapter 12B (“the Equal Benefits Ordinance”) requires the City to only contract with businesses that offer benefits equally to employees with domestic partners and employees with spouses.</p> <p>Domestic Partners are couples registered with any State or local government agency authorized to perform such registrations. This applies to both same-sex and different-sex couples. Domestic partnerships and marriages may only be verified to the same extent and in the same manner, for example, domestic partner registry certificates are fully equivalent to marriage certificates.</p>
<i>Requirements</i>	<p>Only 3 documents are required to demonstrate compliance:</p> <ol style="list-style-type: none">1. <u>Compliant 12B Declaration</u> Submit through the SF City Partner portal at https://sfcitypartner.sfgov.org/ Paper and PDF versions are not accepted.2. <u>Formal verification of your business’s employee count</u> Examples of acceptable documentation include: Form W-3, Form 941, or DE 9C form. Redact confidential employee information.3. <u>Memorandum to Employees</u> An example of a memorandum that contains all of the necessary assurances is available upon request.
<i>Joint Ventures</i>	<p>Each joint venture (JV) partner must be compliant with Chapter 12B. In addition, the JV must obtain a separate supplier number and establish Equal Benefits compliance under that number.</p> <p>A JV can only become compliant after all JV partners are compliant.</p> <p>Be sure to include “JV” in the name of your business when you register in the Supplier Portal.</p>

<i>Tips</i>	<ul style="list-style-type: none"> • SUBMIT ONLY THE 3 DOCUMENTS THAT ARE REQUIRED: 12B Declaration, verification of employee count and employee memorandum. • Start the compliance process well before bid opening.
<i>Essentials</i>	<p>Compliance must be established at the time a contract is signed. It is not necessary to comply in order to bid.</p> <p>Failure to offer benefits in accordance with the Chapter 12B Equal Benefits Ordinance may result in suspension of compliance status, financial penalties, and/or the inability to contract with the City and County of San Francisco.</p> <p>The Equal Benefits Ordinance does not require that any particular benefit be offered, only that any benefit offered be administered equally.</p> <p>It is easy to obtain equal insurance coverage. Many insurance carriers are required by law to offer domestic partner coverage and it will cost no more than spousal coverage.</p> <p>A compliant business must update compliance every 3 years or if there is a name change or a significant change in employee benefits, employee count, or corporate structure.</p>
<i>Compliance Audits</i>	<p>The City and County of San Francisco audits businesses to verify that the answers on the 12B Declaration are complete and accurate.</p> <p>Upon audit, you will be required to provide benefit documentation for each benefit. Such documentation may include the employee handbook and confirmations from your insurance, union, and retirement documents.</p> <p>The Chapter 12B Equal Benefits Audit Guide provides a detailed description of compliant documentation.</p>

2021 August

Equal Benefits Unit
Contract Monitoring Division
1155 Market Street, 4th Floor, San Francisco, CA 94103
Telephone (415) 581-2310

cmd.equalbenefits@sfgov.org

www.sfgov.org/cmd

<https://sfgov.org/cmd/how-comply>

For passwords and account support, contact the DTIS Help Desk.

628-652-5000

dtis.helpdesk@sfgov.org

For general registration questions, contact the User Support Desk.

415-944-2442

sfcitypartnersupport@sfgov.org

For changes to your Bidder/Supplier info, contact the Supplier Management Team.

415-554-6702

supplier.management@sfgov.org

Submitting An Online 12B Declaration

***The 12B Declaration must be submitted online through the City's Supplier Portal.
Each submitted Declaration stands alone as a legal document and may not be revised.
If amendments to a Declaration are necessary, you must submit a new Declaration.***

When completing the online 12B Declaration, you will be asked to provide supporting documentation:

- ☒ Formal verification of employee count.
 - Verification is mandatory even if there are no employees.
 - Examples of the verification include: Form W-3, Form 941, DE 9C form, Form SS-4, Form 1040 SE, OSHA Form 300A, CA EDD Quarterly Contribution Return.
- ☒ Verification that your employees are notified that their benefits are provided equally to employees with spouses and employees with domestic partners.
 - A link to a template for a compliant employee memorandum is embedded in the 12B Declaration.
 - Note: the memorandum is not a substitute for full incorporation of domestic partner language in all written benefit policies.

1	Have your username and password ready. <i>Tip: If you do not have a username and password, contact the DTIS Help Desk at Dtis.helpdesk@sfgov.org</i>
2	Have the count of employees in the U.S. ready and know which benefits your business offers.
3	Go to the Supplier Portal at https://sfcitypartner.sfgov.org/
4	Click the Log In button.
5	Click on the Certifications menu on the right side of the screen.
6	Click on 12B Declaration .
7	For a new Declaration, click the Add A New Value tab. <i>To locate a previous Declaration that has not been submitted yet, click Find An Existing Value, enter the Declaration #, and click the Search button. Then skip to Step 12, below.</i>
8	On the search page that appears, ensure the SetID field is set to SHARE .
9	If the Supplier ID or Bidder ID does not automatically appear, enter the number. <i>Tip: Use your Supplier ID if you have one. If you do not have a Supplier ID, enter your Bidder ID.</i>
10	Under Declaration Type , select Supplier if you have a Supplier ID. If you do not have a Supplier ID, select Bidder . (Bidder numbers start with "B")

11	Click the Add button.
12	Follow the prompts to complete the 12B Declaration. Attach only the verification of employee count and Memorandum to Employees. Policy documents that are submitted with this form will be analyzed in the event of an audit.
13	At the end of the Declaration, click the following buttons in this order: Save, Print, Submit or Cancel . <i>Tip: Write down the Declaration Number that appears at the top of the page in case you need to contact the Equal Benefits Unit.</i>

2021 August

Equal Benefits Unit
Contract Monitoring Division
1155 Market Street, 4th Floor, San Francisco, CA 94103
Telephone (415) 581-2310
cmd.equalbenefits@sfgov.org www.sfgov.org/cmd <https://sfgov.org/cmd/how-comply>

For passwords and account support, contact the DTIS Help Desk.
628-652-5000
dtis.helpdesk@sfgov.org

For general registration questions, contact the User Support Desk.
415-944-2442
sfcitypartnersupport@sfgov.org

For changes to your Bidder/Supplier info contact, the Supplier Management Team.
415-554-6702
supplier.management@sfgov.org

How Benefits Apply To Dependents

Benefit	Check Spouse and/or Domestic Partner if they:
Health Insurance	... can be added as dependents on the employee's Health plan.
Dental Insurance	... can be added as dependents on the employee's Dental plan.
Vision Insurance	... can be added as dependents on the employee's Vision plan.
Pension	... have access to all beneficiary distribution options <i>and</i> anyone can be named as a beneficiary.
Retirement	... have access to all beneficiary distribution options <i>and</i> anyone can be named as a beneficiary.
Bereavement Leave	... and, if included, their family are included in the definition of immediate family for whom an employee may take leave. <i>(To be equal, all included family members must be the same for both spouses and domestic partners.)</i>
Family Medical/Military Leave	... are included in the definition of immediate family for whom an employee may take leave. <i>(To be equal, all included family members must be the same for both spouses and domestic partners.)</i>
Parental Leave	... are considered to be a parent.
Employee Assistance Program	... are considered to be an eligible dependent.
Relocation and/or Travel	... are eligible for house-hunting trips and/or other relocation or travel benefits.
Discounts/Facilities/Events	... are eligible to participate in the employee's benefit.
Credit Union	... are eligible to participate in the employee's membership or establish an account.
Child Care	... can obtain care for their child.
Dependent Life Insurance	... and/or their children are recognized as an eligible dependent.
Short-Term/Long-Term Disability Insurance	... are eligible for training and/or survivor benefits.
Accidental Death & Dismemberment	... are eligible for training and/or survivor benefits.
Other	... can participate in the plan and/or benefit from it in some way.
Union	... have access to benefits through a collective bargaining agreement. When benefits are provided through a collective bargaining agreement, check both the Union line and the benefits above that are offered to union employees and/or their dependents.

EXAMPLE OF 12B COMPLIANT MEMORANDUM TO EMPLOYEES

[DELETE THE LINE ABOVE AND PRINT THIS MEMORANDUM ON YOUR BUSINESS LETTERHEAD]

[THE FOLLOWING HEADER IS NECESSARY]

To: All [Business Name] Employees
From: [Business Representative Name, Title]
Re: Domestic Partner Benefit Policy
Date: [Date]

[Business Name] does not discriminate based on the following protected categories:

Race, Color, Creed, Religion, National origin, Ancestry, Age, Sex, Sexual Orientation, Gender identity (Transgender status), Domestic Partner status, Marital status, Disability, AIDS/HIV status, Height, Weight

[Business Name] offers the following employee benefits equally to employees with spouses and employees with domestic partners, and to the spouses and domestic partners of such employees:
[List all benefits provided by business and delete all other benefits]

- Health Insurance - [List each carrier]
- Dental Insurance - [List each carrier]
- Vision Insurance - [List each carrier]
- Retirement - [List each type of plan, for example, Pension, 401(k), 403(b), Simple IRA]
- Bereavement Leave
- Family Leave
- Parental Leave
- Employee Assistance Program
- Relocation and/or Travel
- Business Discount, Facilities & Events
- Credit Union
- Child Care
- Dependent Life Insurance - [List each carrier]
- Short Term and/or Long-Term Disability Insurance - [List each carrier]
- Accidental Death & Dismemberment Insurance – [List each carrier]

Domestic partners are defined as couples who are registered with any State or local government domestic partner registry. This applies to both same-sex and different-sex couples. Any requirements for proof of relationship or waiting periods are applied equally to domestic partnerships and marriages. Domestic partner registry certificates are accepted as fully equivalent to marriage certificates.

Chapter 12B Equal Benefits Audit Standards

When an audit of your company's benefits is performed, you will be required to provide all benefit documentation. Use the standards below to determine if your benefit policies are administered equally. Where spouses, stepchildren, and an employee's extended family are referenced, each benefit policy must also include domestic partners, their children, and their equivalent family members. Domestic partner language must be fully incorporated into policies. Blanket statements regarding your company's general domestic partner policy in a separate part of the employee handbook are insufficient.

Benefit Type	Guidelines	Typical Documentation
Health Dental Vision Dependent Life Long-term Disability Long-term Care AD&D Business Travel Accident Personal Travel Accident	Insurance confirmations must make clear that a Domestic Partner is any person who has a currently registered domestic partnership with any State or local governmental body. This applies to both same-sex and different-sex couples. Any requirements for proof of relationship and waiting periods must apply equally to domestic partnerships and marriages. For example, domestic partner registry certificates must be recognized as fully equivalent to marriage certificates. COBRA-like continuation coverage must be available to domestic partners and their children where continuation coverage is available to spouses and stepchildren. (Pre-tax benefits cannot be made equal.)	Acceptable: Basic Plan Document, Summary Plan Description, Evidence of Coverage, rider plus plan cover page. Unacceptable: letters from brokers, enrollment forms, invoices.
Bereavement Leave Family Leave Family Medical Leave Military Caregiver Leave Military Exigency Leave Parental Leave Relocation and Travel Discounts/Facilities/Events	Where the term "spouse" is used, the term "domestic partner" must be included. The definition of "immediate family" must be defined in the bereavement policy and if it includes in-laws or other family relationships established through marriage, the equivalent members of a domestic partner's family must be explicitly included. An example of a compliant definition is: the <i>employee's spouse or domestic partner; a parent, child or sibling of the employee, spouse or domestic partner; and the spouse or domestic partner of the employee's parents, children, or siblings</i> . Note: federal law does not prevent recognition of domestic partners or their children in the FMLA and military leave policies.	Employee handbook policies.

Benefit Type	Guidelines	Typical Documentation
Retirement (Pension, 401(k), etc.)	In addition to demonstrating that anyone can be a beneficiary, plan documents must confirm that the distribution options are the same for spouse and non-spouse or domestic partner beneficiaries to the greatest extent permitted by law.	The cover page and distribution section of the Summary Plan Description or Basic Plan Document of your 401(k) or pension or savings plan(s). If you have a prototype plan, include the Adoption Agreement.
Employee Assistance Credit Union	Domestic partners/household members must be included where spouses are referenced.	A brochure or letter from the provider or the policy from the employee handbook.
Union	Separate documentation must be submitted for benefits administered through collective bargaining agreements.	A statement or other documentation from the union that confirms domestic partners are recognized.
Other	If your business offers other benefits, specify what they are on the 12B Declaration and provide documentation.	Varies; send an email to cmd.equalbenefits@sfgov.org to reach the Equal Benefits Unit.

2021 August

Equal Benefits Unit
Contract Monitoring Division
1155 Market Street, 4th Floor, San Francisco, CA 94103
Telephone (415) 581-2310

cmd.equalbenefits@sfgov.org

www.sfgov.org/cmd

<https://sfgov.org/cmd/how-comply>

For passwords and account support, contact the DTIS Help Desk.

628-652-5000

dtis.helpdesk@sfgov.org

For general registration questions, contact the User Support Desk.

415-944-2442

sfcitypartnersupport@sfgov.org

For changes to your Bidder/Supplier info contact, the Supplier Management Team.

415-554-6702

supplier.management@sfgov.org

Answers to Common 12B Equal Benefits Questions

Q: I submitted a 12B Declaration. How do I check my company's status?

A: You will receive a confirmation email when your company is assigned compliance.

Compliance status is specified in your PeopleSoft account on your home page.

You may also contact the Equal Benefits Unit at cmd.equalbenefits@sfgov.org or 415-581-2310 with additional status questions.

Q: How do I register compliance with the Equal Benefits Ordinance?

A: You must submit a compliant 12B Declaration, formal verification of the employee count for your business, and a copy of the notification you will provide to employees that explains your company's domestic partner policy. A template for the notification is available.

Q: My business does not have any employees. Does my business need to comply with the Equal Benefits Ordinance?

A: Yes. You will need submit both the 12B Declaration and formal verification that explicitly states that are no employees.

Q: My business does not have any employees or locations in San Francisco. Does my business need to comply with the Equal Benefits Ordinance?

A: Yes.

Q: My business does not offer any employee benefits. Does my business need to comply with the Equal Benefits Ordinance?

A: Yes.

Q: I forgot to include a benefit on my 12B Declaration. Why can't I edit the 12B Declaration I submitted?

A: Each submitted 12B Declaration stands alone as a legal document. If an amendment is necessary, a new Declaration must be submitted.

Q: My business has been assigned 12B compliance. What do I do now?

A: First, if you are a Bidder, you must be converted to a Supplier. Contact the Supplier Management Team at supplier.management@sfgov.org to request conversion.

Next, notify any City department contact with whom you have been working that your business is compliant.

Q: The name of my business changed after 12B compliance was assigned. Is my business still compliant?

A: To maintain compliance, you must submit a new 12B Declaration and supporting documentation if there is a substantial change in your business. Examples of substantial changes include name changes, employee count changes that result in a change in benefits and tax ID changes.

Q: I find the compliance process to be very confusing. Is there someone I can ask for help?

A: Contact the Equal Benefits Unit at cmd.equalbenefits@sfgov.org or 415-581-2310 for assistance walking through the compliance process.



Minimum Compensation Ordinance (MCO) Declaration

What the Ordinance does. The Minimum Compensation Ordinance (MCO) became effective October 8, 2000, and was later amended by the Board of Supervisors, with an effective date for the amendments of October 14, 2007. The MCO requires City contractors and subcontractors to pay Covered Employees a minimum hourly wage and to provide 12 compensated and 10 uncompensated days off per year. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements.

The MCO applies only if you have at least \$25,000 in cumulative annual business with a City department or departments and have more than 5 employees, including employees of any parent, subsidiaries and subcontractors.

The City may require contractors to submit reports on the number of employees affected by the MCO.

Effect on City contracting. For contracts and amendments signed on or after October 8, 2000 the MCO will have the following effect:

- In each contract, the contractor will agree to abide by the MCO and to provide its employees the minimum benefits the MCO requires, and to require its subcontractors subject to MCO to do the same.
- If a contractor does not agree to provide the MCO's minimum benefits, the City will award a contract to that contractor **only if** the contractor has received an approved exemption or waiver under MCO from the Office of Labor Standards Enforcement (OLSE) through the contracting Department. The contract will not contain the agreement to abide by the MCO if there is an exemption or waiver on file.

What this form does. If you can assure the City now that, beginning with the first City contract or amendment you receive after October 8, 2000 and until further notice, you will provide the minimum benefit levels specified in the MCO to your covered employees, and will ensure that your subcontractors also subject to the MCO do the same, this will help the City's contracting process.

If you cannot make this assurance now, please do not return this form.

For more information, (1) see our Website, including the complete text of the ordinance: www.sfgov.org/olse, (2) e-mail us at: MCO@sfgov.org, (3) Phone us at (415) 554-7903.

Where to Send this Form. Submit this form via San Francisco's centralized vendor portal sfcitypartnersupport@sfgov.org or call the Supplier Support Desk at 415-944-2442, Ext 1

Declaration

In order to be a certified vendor with the City and County of San Francisco, this company will provide, if applicable, the minimum benefit levels specified in the MCO to our Covered Employees, and will ensure that our subcontractors also subject to the MCO do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature

Date

Print Name

Bidder/Supplier # - if known

Company Name

() _____
Phone

Federal Employer ID #



Health Care Accountability Ordinance (HCAO) Declaration

What the Ordinance Requires. The Health Care Accountability Ordinance (HCAO), which became effective July 1, 2001, requires Contractors that provide services to the City or enter into certain leases with the City, and certain Subcontractors, Subtenants and parties providing services to Tenants and Subtenants on City property, to provide health plan benefits to Covered Employees, or make payments to the City for use by the Department of Public Health (DPH), or, under limited circumstances, make payments directly to Employees.

The HCAO applies only to Contractors with at least \$25,000 (\$50,000 for non-profit organizations) in cumulative annual business with a City department(s) and have more than 20 Employees (50 Employees for non-profit organizations) including Employees of any parent or subsidiaries.

The City may require Contractors to submit reports on the number of Employees affected by the HCAO.

Effect on City Contracting. For contracts and amendments signed on or after July 1, 2001, the HCAO requires the following:

- Each contract must include terms ensuring that the Contractor will agree to abide by the HCAO and either to provide its employees with health plan benefits meeting the Minimum Standards set forth by the Director of Health or to make the payments required by the HCAO;
- All City Contractors must agree to comply with the requirements of the HCAO unless the Contracting Department has obtained an approved exemption or waiver under the HCAO from the Office of Labor Standards (OLSE).
- Contractors must require any Subcontractors subject to the HCAO to comply with the HCAO:

The Purpose of This Declaration. By submitting this declaration, you are providing assurances to the City that, beginning with the first City contract or amendment you receive after July 1, 2001 and until further notice, you will either provide the health plan benefits meeting the Minimum Standards to your covered employees or make the payments required by the HCAO, and will ensure that your Subcontractors also abide by these requirements. **If you cannot provide this assurance, do not return this form.**

To obtain more information regarding the HCAO, Visit our website, which includes links to the complete text of the HCAO, at www.sfgov.org/olse/hcao; send an e-mail to HCAO@sfgov.org; or call (415) 554-7903.

Where to Send this Form. Submit this form via San Francisco's centralized vendor portal sfcitypartnersupport@sfgov.org or call the Supplier Support Desk at 415-944-2442, Ext 1

Declaration

In order to be a certified vendor with the City and County of San Francisco, the company named below will either provide, if applicable, health benefits specified in the HCAO to our covered employees or make the payments required by the HCAO, and will ensure that our subcontractors that are subject to the HCAO also comply with these requirements, until further notice. The company named below will provide such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature

Date

Print Name

Bidder/Supplier # - if known

Company Name

SF OFFICE OF LABOR STANDARDS ENFORCEMENT, CITY HALL ROOM 430
1 DR. CARLTON B. GOODLETT PLACE • SAN FRANCISCO, CA 94102

() _____
Phone

Federal Employer ID #

MCO/HCAO TEL (415) 554-7903 • FAX (415) 554-6291
WWW.SFGOV.ORG/OLSE



SAN FRANCISCO
OFFICE OF ECONOMIC &
WORKFORCE DEVELOPMENT

FIRST SOURCE
HIRING
CITY & COUNTY OF SAN FRANCISCO
WORKFORCE PROJECTION FORM

Business Name:
Contract ID (If applicable): PRO.0209
Phone:
Date:

Main Contact:
Supplier ID (If applicable):
Email:
Signature: _____
Name of Authorized Representative:

** By signing this form, the company agrees to participate in the San Francisco Workforce Development System established by the City and County of San Francisco, and comply with the provisions of the First Source Hiring Program pursuant to Chapter 83 of the San Francisco Administrative Code*

Instructions:

- This form must be submitted via email to the Office of Economic and Workforce Development at business.services@sfgov.org with the subject line First Source Hiring Workforce Projection Form
- If an entry level position becomes available at any time during the term of the lease and/or contract, the company must notify the First Source Hiring Program Administrator at business.services@sfgov.org

Section 1: Select your Industry:

- | | | | |
|---|--|---|--|
| <input type="checkbox"/> Accommodation and Food Services | <input type="checkbox"/> Educational Services | <input type="checkbox"/> Mining, Quarrying, and Oil and Gas Extraction | <input type="checkbox"/> Retail Trade |
| <input type="checkbox"/> Administrative and Support Services | <input type="checkbox"/> Finance and Insurance | <input type="checkbox"/> Manufacturing | <input type="checkbox"/> Transportation and Warehousing |
| <input type="checkbox"/> Agriculture, Forestry, Fishing and Hunting | <input type="checkbox"/> Health Care and Social Assistance | <input type="checkbox"/> Professional, Scientific, and Technical Services | <input type="checkbox"/> Utilities |
| <input type="checkbox"/> Arts, Entertainment, and Recreation | <input type="checkbox"/> Information | <input type="checkbox"/> Public Administration | <input type="checkbox"/> Wholesale Trade |
| <input type="checkbox"/> Construction | <input type="checkbox"/> Management of Companies and Enterprises | <input type="checkbox"/> Real Estate and Rental and Leasing | <input type="checkbox"/> Other Services (except Public Administration) |

Section 2: Indicate Industry NAICS code if known: _____

Section 3: Provide information on all Entry Level Positions:

Entry level Position Title	Job Description	Number of New Hires	Projected Hiring Date

Section 4: Select the type of First Source Project:

- | | |
|---|--|
| <input type="checkbox"/> Contractor | <input type="checkbox"/> Scene in San Francisco Rebate Applicant |
| <input type="checkbox"/> Subcontractor | <input type="checkbox"/> City Contract (Department) _____ |
| <input type="checkbox"/> City of San Francisco Tenant | <input type="checkbox"/> Cannabis |
| <input type="checkbox"/> Subtenant | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Developer | |



APPENDIX H

RELEASE OF LIABILITY AND WAIVER

The undersigned hereby fully and forever release, exonerate, discharge and covenant not to sue the City, its commissions and boards, officers and employees, and all individuals, entities and firms providing information, comments, or conclusions ("Reference Information") in response to inquiries that the City may make regarding the qualifications or experience of a prime proposer, proposed joint venture partner, proposed subcontractor or proposed key/lead team member in connection with the selection process for **PUC.PRO.0297 SFPUC Customer Administrative Services Community Choice Aggregation** from and for any and all claims, causes of action, demands, damages, and any and all liabilities of any kind or description, in law, equity, or otherwise arising out of the provision of said Reference Information. This Release and Waiver is freely given and will be applicable whether or not the responses by said individuals, entities or firms are accurate or not, or made willfully or negligently.

For Prime Proposer/Lead JV Partner

Signature of Authorized Representative of Prime/Lead JV Partner

Date

Print Name and Title

Prime/Lead JV Partner Company Name

For Non-Lead JV Partner (if applicable)

Signature of Authorized Representative of Non-Lead JV Partner

Date

Print Name and Title

Non-Lead JV Partner Company Name

For Non-Lead JV Partner (if applicable)

Signature of Authorized Representative of Non-Lead JV Partner

Date

Print Name and Title

Non-Lead JV Partner Company Name

Attach a copy of this page with identifying information and signatures for representatives of additional Non-Lead JV partners if necessary.

END OF DOCUMENT

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION
INFRASTRUCTURE DIVISION
PROCEDURES MANUAL
PROGRAM & PROJECT MANAGEMENT**

SECTION 3: CONTRACT MANAGEMENT	APPROVED: _____ Stephen Robinson Assistant General Manager Infrastructure Division
PROCEDURE: PM 3.16	
TITLE: CONSULTANT PERFORMANCE EVALUATION	DATE: 12/29/2023 REVISION: 1

1. POLICY

Consultant Performance Evaluations must be completed for all San Francisco Public Utilities Commission (SFPUC) Infrastructure Division consultant professional service agreements greater than the Threshold Amount as defined in San Francisco Administrative Code Chapter 6 (currently \$1,000,000). For each consultant agreement, evaluations must be conducted on an annual basis and at the end of the consultant agreement, and must use the Consultant Performance Evaluation (CPE) form included with this procedure as Attachment 1. Evaluations must be performed at the contract level but may be supported by optional evaluations at the Task Order level. A Task Order level evaluation is required when the Task Order amount is greater than 50% of the contract amount and greater than the Threshold Amount as defined in San Francisco Administrative Code Chapter 6 (currently \$1,000,000). The goals of these evaluations are to (1) assess the consultant's performance, (2) provide periodic feedback to the consultant, and (3) review the SFPUC management of the agreement.

Assessing consultant performance is a standard business practice to:

- Determine if the SFPUC is receiving good value and quality deliverables;
- Provide opportunities for continuous improvement/lessons learned; and
- Provide input in the selection process for future consultant agreements when possible.

2. DEFINITIONS

None.

3. RESPONSIBILITIES

As the Evaluator, the Contract Manager (or their SFPUC designee) must complete all required CPEs as specified in this procedure. The Contract Manager is the SFPUC

staff identified as Contract Manager in the Contract. The Contract Manager (or their SFPUC designee) is responsible to oversee the work of the consultant. For example, the Evaluator may be a Project Manager, Project Engineer, Environmental Project Manager, or Construction Manager.

4. IMPLEMENTATION

- 4.1 The Contract Manager reviews the consultant evaluation process and use of the CPE form with the consultant during the negotiations of the consultant agreement to establish clear expectations.
- 4.2 The Evaluator, with input from other appropriate City staff and management, completes the CPE form at the conclusion of the contract (or termination of the agreement) and at least annually (annual anniversary of the consultant agreement) for multi-year consultant agreements. The Evaluator selects one of the Rating Level Codes indicated below and writes comments in the appropriate boxes based on the following definitions below. Sample questions are provided on the CPE form for the Evaluator's consideration.
 - **Excellent:** The consultant's performance exceeds contract requirements to the City's benefit. Only a few minor problems have been encountered and have all been addressed timely by the consultant using effective corrective actions. Extraordinary performance demonstrated by (i) cost savings, innovative options, and/or work efficiencies; (ii) work products of excellent quality; and (iii) overall added value to the SFPUC.
 - **Good:** The consultant's performance meets contract requirements. Some problems have been encountered but corrective actions have been satisfactory.
 - **Fair:** Performance does not meet some contractual requirements. Multiple or serious problems have been encountered and the consultant's corrective actions have not been satisfactory or have not been fully implemented. Timely corrective actions with no additional or minimal costs to the City are required. Comments on CPE form are required for Fair ratings.
 - **Unsatisfactory:** Performance does not meet contractual requirements and timely recovery with additional or minimal costs to the City are likely. The consultant's corrective actions have been ineffective and the consultant's performance may lead to the termination of the consultant agreement. Comments on CPE form are required for Unsatisfactory ratings.
- 4.3 The Evaluator forwards the completed CPE to the consultant for review, with a deadline (14 calendar days after receipt of the evaluation) for the consultant to sign the CPE form or request a meeting to discuss any disagreement with the results of the evaluation. For a joint venture contract, all prime consultants will be included in the evaluation process.
- 4.4 If the consultant agrees with the evaluation, the consultant signs the CPE form and returns the signed document to the Evaluator by the pre-determined deadline.

- 4.5 If the consultant disagrees with an evaluation, the consultant must provide the Evaluator with a written response by the pre-determined deadline. Upon receipt of the consultant's response, the Evaluator will schedule a meeting with appropriate SFPUC personnel and the consultant to discuss the content of the CPE form. After that meeting, the Evaluator will issue a final determination and may modify the content of the CPE form accordingly.
- 4.6 The Evaluator will also schedule a meeting with a consultant whenever any part of the CPE form includes a rating of "Fair" or "Unsatisfactory." After the meeting, the Evaluator would issue a final determination and may modify the content of the CPE form accordingly. If the consultant disagrees with the final determination, the consultant may provide a final written response that will be attached to the CPE form to be archived.
- 4.7 The Evaluator must obtain the consultant's signature on the CPE form or attach supporting documentation on why the signature is missing.
- 4.8 If a consultant does not sign the CPE and does not submit a response by the pre-determined deadline, the evaluation and CPE form should be considered final, although it may not be signed by the consultant. In this case, the supporting documentation as to why the consultant's signature is missing must be attached to the CPE form to be archived.
- 4.9 The Evaluator signs the evaluation, sends a copy to the consultant, and archives a copy at the Infrastructure Worksite.
- 4.10 On multiple-year consultant agreements, perform a consultant evaluation and complete a CPE form on an annual basis. This evaluation should be performed on the annual anniversary (Notice to Proceed) of the consultant agreement. Also, perform a final consultant evaluation and complete a final CPE form at completion of the consultant agreement. The final CPE form should reflect the consultant performance recorded in previous CPE forms and not only focus on the period since the last consultant performance evaluation. Upon completion of the final CPE form, the annual evaluations will be discarded.
- 4.11 All CPE forms will remain in the SFPUC records for a period of at least 5 years following completion of each consultant agreement. Therefore, a CPE form and any consultant response may be forwarded to selection panels for a period of 5 years after completion of the consultant agreement. For consultant agreements that have been completed, only the final CPE form may be provided to the selection panels of future consultant agreements. Whereas, for consultant agreements that have yet to be completed, the most recent CPE may be provided to the selection panel.
- 4.12 All SFPUC Request for Proposals (RFPs) include language regarding the consultant evaluation process and indicate that the process is a contract requirement and is a component of the selection process for those proposers with performance evaluations on file. The contract Waiver/Release of Liability form covers information provided in all completed CPEs.

- 4.13 Project Closeout: The lessons learned from the Task Order level consultant evaluation process are to be included in the Project Closeout Report. The annual CPEs as well as the final end-of-the-consulting-contract CPEs must be submitted to the Infrastructure Worksite.

5. **REFERENCES**

- Procedure PM 3.14 Project Closeout
- San Francisco Administrative Code Chapter 6 (effective date: August 1, 2015)

6. **ATTACHMENTS**

- (1) Attachment 1: Consultant Performance Evaluation Form

Revisions Log

REVISION NO.	DATE	CHANGES MADE
Rev. 1	12/29/2023	Updates to Policy and other sections.

ATTACHMENT 1: CONSULTANT PERFORMANCE EVALUATION FORM

SFPUC – INFRASTRUCTURE DIVISION CONSULTANT PERFORMANCE EVALUATION:			
Consultant Name:		Type of Evaluation: Annual <input type="checkbox"/> Final <input type="checkbox"/>	Date of Evaluation:
Consultant Address:		Evaluation No.:	Evaluation Period: -
		Agreement No.:	Enterprise/Division:
Name and Phone of Consultant Lead Manager:		Type of Consultant Agreement: Program/Project Management <input type="checkbox"/> Environmental <input type="checkbox"/> Engineering (Planning & Design) <input type="checkbox"/> Construction Management <input type="checkbox"/> Other <input type="checkbox"/>	
Agreement Name:			
Original Agreement Duration:	Original Agreement Start Date:		
Original Agreement End Date:	Revised Agreement End Date:	Original Agreement Value: \$	Revised Agreement Value: \$
1. QUALITY OF SERVICE: Excellent <input type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Unsatisfactory <input type="checkbox"/>			
Sample questions are provided below for the Evaluator's consideration. <ul style="list-style-type: none"> • How do you rate the quality of the services provided by the consultant? • How do you rate the quality of the work product and deliverables provided by the consultant? • Did the consultant provide the level of expertise and skills required to do the work? • Was the consultant able to provide the required as-needed expertise to address unexpected issues? • Were the consultant work products reviewed and validated as part of a thorough QA/QC program? • Was a management plan developed and used to ensure the quality of the services provided? • Were the findings and recommendation of the consultant adequately supported by facts and analyses? • Did the consultant identify and promptly notify the SFPUC of issues or conditions that could impact the quality, schedule and/or cost of the work, and did it assist the SFPUC to resolve or mitigate them? • Was the consultant knowledgeable on the industry's latest standards, trends, and technologies? • Was the consultant responsive to the SFPUC's needs and did it address any concerns raised? • Did the consultant follow the directives issued by the SFPUC? • Did the consultant compromise the quality of a work product or deliverable to make a deadline? • Did the SFPUC formally notify and/or take actions against the consultant due to the consultant's poor performance? 			
Comments (required for Fair and Unsatisfactory ratings):			

2. SCHEDULE MANAGEMENT:		Excellent <input type="checkbox"/>	Good <input type="checkbox"/>	Fair <input type="checkbox"/>	Unsatisfactory <input type="checkbox"/>
<p>Sample questions are provided below for the Evaluator's consideration.</p> <ul style="list-style-type: none"> • Did the consultant meet the time requirements outlined in the agreement? • Did the consultant submit work products and deliverables according to the pre-established deadlines? • Was the project delayed in any way due to the timeliness or performance of the consultant? • Did the consultant timely take actions or implement a recovery plan to avoid or minimize delays? • Did the consultant promptly make requests for required time extensions? • If the consultant was granted extensions of time, were these extensions reasonable? • If applicable, was the consultant timely in obtaining the internal and external approvals required to perform the work? 					
Comments (required for Fair and Unsatisfactory ratings):					
3. COST MANAGEMENT:		Excellent <input type="checkbox"/>	Good <input type="checkbox"/>	Fair <input type="checkbox"/>	Unsatisfactory <input type="checkbox"/>
<p>Sample questions are provided below for the Evaluator's consideration.</p> <ul style="list-style-type: none"> • Did the consultant provide the required work products and services within the allocated budget? • Did the consultant make reasonable efforts to contain costs? • Did the performance of the consultant result in any increased costs for the services provided? • Did the consultant accurately forecast the cost for the services to be provided throughout the duration of the agreement? • Did the consultant make timely requests for budget increases? • If the consultant was granted budget increases, were these increases reasonable? 					
Comments (required for Fair and Unsatisfactory ratings):					

[illegible]

ATTACHMENT 1: CONSULTANT PERFORMANCE EVALUATION FORM

6. VALUE OF SERVICES:	Excellent <input type="checkbox"/>	Good <input type="checkbox"/>	Fair <input type="checkbox"/>	Unsatisfactory <input type="checkbox"/>
<p>Sample questions are provided below for the Evaluator's consideration.</p> <ul style="list-style-type: none">• How do you rate the value of the services provided by the consultant? Do you feel the costs of the benefits realized as a result of the services provided were reasonable?• Did the consultant identify innovative options, make recommendations that led to cost savings, and/or offer proposals to increase efficiencies?• In the course of its work, did the consultant come across issues that were not in the scope of the agreement but nonetheless pro-actively offered advice and recommendations that may benefit the SFPUC?				
Comments (required for Fair and Unsatisfactory ratings): 				
7. ADMINISTRATIVE FUNCTIONS:	Excellent <input type="checkbox"/>	Good <input type="checkbox"/>	Fair <input type="checkbox"/>	Unsatisfactory <input type="checkbox"/>
<p>Sample questions are provided below for the Evaluator's consideration.</p> <ul style="list-style-type: none">• Was the consultant diligent at meeting all the contractual requirements?• Did the consultant secure all needed approvals before proceeding with the work requiring these approvals?• How do you rate the communication effectiveness of the consultant? Was the consultant diligent about raising issues in a timely manner? Was the consultant staff sensitive on how they documented issues in writing?• Did the consultant maintain thorough and accurate records of the work performed to support the content of the deliverables submitted to the SFPUC?• Were the progress reports submitted by the consultant accurate, timely and thorough?• Were the invoices submitted by the consultant accurate, timely and adequately justified?• Did the consultant pay its sub-consultants promptly?• Did the consultant meet the Local Business Enterprise (LBE) participation goals it committed to? If applicable, did the consultant perform all work safely and maintain a safe working environment at all times?				
Comments (required for Fair and Unsatisfactory ratings): 				

ATTACHMENT 1: CONSULTANT PERFORMANCE EVALUATION FORM

OVERALL RATING: Excellent <input type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Unsatisfactory <input type="checkbox"/>	
Based on the rating for the seven (7) evaluation categories and your overall assessment of the services provided, how would you qualify the consultant's overall performance?	
Would you have reservations working with this consultant on other assignments in the future? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Comments (required for Fair and Unsatisfactory ratings, or if answered Yes to above question):	
EVALUATOR AND DEPARTMENT HEAD	
Evaluator Name:	Evaluator Title:
Evaluator Phone:	Evaluator E-mail:
Department Head Name:	Department Head Title:
Evaluator Signature and Date:	Department Head Signature and Date:
CONSULTANT RESPONSE	
<input type="checkbox"/> Yes, we agree with the findings of this performance evaluation	<input type="checkbox"/> No, we do not agree with the findings of this performance evaluation
Signature of Consultant Lead Manager:	Did Consultant submit written response? Yes <input type="checkbox"/> No <input type="checkbox"/>

Social Impact Partnership (SIP) Program Proposal Response Form

Instructions:

- For a better user experience, complete this form using [Adobe Acrobat Reader](#).
- Red asterisks (*) are mandatory fields and must be completed.

A. Proposed Commitment Type and Amount

Proposed Commitments for participation in the SIP Program must be in the form of:

- (1) Direct Financial Contributions that Proposer will pay directly to a Beneficiary; and/or
- (2) Volunteer Hours that Proposer will provide to support a Beneficiary.

As specified in RFP Section 5.2.9, the amount of a Proposed Commitment must be delivered as direct services and programming in support of a Program Area where key performance indicators and outcomes can be reported.

For Program Area(s) supported by the Proposed Commitments, please select "Yes" and complete the direct financial and/or volunteer hour fields.

- **Program Area: *Job Exposure, Training, and Internships***

Is Proposer making commitments to this Program Area:

*

COMMITMENT TYPE AND AMOUNT:

Direct Financial:

Volunteer Hours: Volunteer Value: \$ 0.00 (\$150/hr fixed rate)

- **Program Area: *Small Business Support***

Is Proposer making commitments to this Program Area:

*

COMMITMENT TYPE AND AMOUNT:

Direct Financial:

Volunteer Hours: Volunteer Value: \$ 0.00 (\$150/hr fixed rate)

- **Program Area: *Public Education***

Is Proposer making commitments to this Program Area:

*

COMMITMENT TYPE AND AMOUNT:

Direct Financial:

Volunteer Hours: Volunteer Value: \$ 0.00 (\$150/hr fixed rate)

- **Program Area: *Environment and Community Health***

Is Proposer making commitments to this Program Area:

*

COMMITMENT TYPE AND AMOUNT:

Direct Financial:

Volunteer Hours: Volunteer Value: \$ 0.00 (\$150/hr fixed rate)

B. Program Areas

A Proposed Commitment must be performed in one or more of the Program Area(s) as described in RFP Section 5.2.9. The **Social Impact Commitment Table** below summarizes the Proposer's Commitments, listed above, in one or more Programs Areas to be delivered throughout the term of the Covered Contract. *The values in the Social Impact Commitment Table are automatically calculated according to the Proposed Commitment Type and Amount provided in Section A.*

SIP Program Area	Direct Financial Contributions	Volunteer Hours	Volunteer Hour (Fixed rate \$150)	Value of Volunteer Hours	Total Contribution
Job Exposure, Training, and Internships	\$ 0.00	0	\$ 150.00	\$ 0.00	\$ 0.00
Small Business Support	\$ 0.00	0	\$ 150.00	\$ 0.00	\$ 0.00
Public Education	\$ 0.00	0	\$ 150.00	\$ 0.00	\$ 0.00
Environment and Community Health	\$ 0.00	0	\$ 150.00	\$ 0.00	\$ 0.00
TOTAL COMMITMENTS					\$ 0.00

- ☐* Proposers shall not add any language conditioning the delivery of its Social Impact Commitments. Proposed Commitments unequivocally bind the selected Contractor to its Social Impact Commitments. If a Proposer includes language conditioning delivery of its Social Impact Commitments on this SIP Proposal Form or as part of its Proposal, SFPUC will deem the Proposal non-compliant, and Proposer will not be eligible to receive any SIP Bonus.

C. Geographic Areas

A Proposed Commitment must be performed in the Geographic Area(s) that has been or will be impacted by the SFPUC's projects, operations, and/or work associated with the applicable Covered Contract Solicitation.

- ☐* Proposer commits to deliver Social Impact Commitments that benefit the geographic region of the **City and County of San Francisco**.

D. Contractor's Key SIP Program Personnel

Proposer must identify a SIP Executive-in-Charge and a SIP Coordinator and provide contact information for those individuals and outline the background and relevant experience of the Proposer's SIP Program personnel in connection with the duties of each as outlined in RFP Section 5.2.9.

The following professionals from [Proposer] * will be responsible for SIP activities, delivery, and required reporting of Proposer's Social Impact Commitments.

SIP Executive-In-Charge will manage the implementation of the Social Impact Commitments, provide oversight, and ensure that the proposed Social Impact Commitments are delivered in a transparent and accountable manner.

- Name: *
- Email: *
- Phone: *
- Describe background and relevant experience: *

(Limit 100 Words)

SIP Coordinator will organize, plan, track, and report on the progress of all Social Impact Commitments.

- Name: *
- Email: *
- Phone: *
- Describe background and relevant experience: *

(Limit 100 Words)

E. Social Impact Work Experience

Describe the Proposer's documented history and/or experience with social impact/community benefits work, including the Proposer's current community involvement and existing community relationships/partnerships related to the Geographic Area and communities associated with the Project. If a Proposer does not have documented history or experience with social impact/community benefits work, the Proposer may alternatively describe how its culture supports the importance and impact of the Proposer delivering Social Impact Commitments through this Project. If a Proposer has previously been awarded SFPUC contracts that have included the SIP Program, the Proposer must describe its level of success in satisfying its SIP obligations as reflected on the [SFPUC public dashboard](#) or a more current progress update for active contracts. *

(Limit: 500 words)

F. Reasoning or Values Alignment to Selected Program Area(s)

Describe the Proposer's reasoning or values alignment that inspired the Proposer to select the Program Area(s) under which it has proposed Social Impact Commitments for this Project.

Proposals will further expand on Proposer's own mission and values, and Proposer's alignment to the SFPUC Commission's adopted policies including the [Environmental Justice](#) (to prevent and mitigate harm), [Community Benefits](#) (to promote positive impacts), and [Racial Justice](#) (to address systemic racism) policies and resolutions.

*

(Limit: 500 words)

G. Work Approach

Describe the Proposer's approach, including how the community(ies) impacted by the Project will be engaged to determine the most appropriate use of Proposer's Social Impact Commitments, how those community(ies) will be selected, and how maximum accountability to the impacted community(ies) will be ensured, consistent with the SFPUC's Environmental Justice, Community Benefits, and Racial Justice policies and resolutions.

*

(Limit: 500 words)

H. Systems, Processes and Documentation

Describe the systems, processes, and substantiating documentation that the Proposer has or will put in place that will allow the Proposer to accurately track and publicly report on the commitments, data, and unique key performance indicators associated with Proposer's Social Impact Commitment(s).

*

(Limit: 500 words)

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 15-0175

WHEREAS, Pursuant to the San Francisco Charter, the management and control of the Community Choice Aggregation (CCA) program is the responsibility of the San Francisco Public Utilities Commission (SFPUC) (Board of Supervisors Ord. No. 146-07, Section 1(a)); and

WHEREAS, The San Francisco Board of Supervisors established a CCA program in 2004 (Ordinance 86-04) and has implemented the program, called CleanPowerSF, through the work of the SFPUC in consultation with the San Francisco Local Agency Formation Commission (Board of Supervisors Ords. 146-07, 147-07 and 232-09); and

WHEREAS, The SFPUC Power Enterprise staff implementing the CleanPowerSF program requires assistance with specialized electricity meter data management and billing services, as well as customer care services to support significant call center volumes during CleanPowerSF implementation and enrollment; and

WHEREAS, It is necessary to procure the services of qualified provider of CCA program administrative and customer care services to provide electricity data management, exchange, billing, and related services to supplement SFPUC staff; and

WHEREAS, The estimated cost of services is \$5,600,000; and

WHEREAS, Services are anticipated to begin in October 2015 and end in October 2018, for a not-to-exceed agreement duration of three years; and

WHEREAS, The Request for Proposals for these services was advertised on May 29, 2015; and

WHEREAS, SFPUC staff and Contract Monitoring Division (CMD) review of the selection panel evaluations and the proposals resulted in the establishment of Noble Americas Energy Solutions LLC ("Noble Americas") as the highest-ranked consulting firm; and

WHEREAS, CMD has approved and Noble Americas has committed to a Local Business Enterprise subconsultant participation goal of 6.75% for this agreement; and

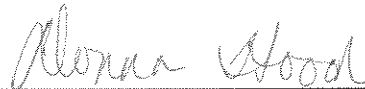
WHEREAS, Failure to reach successful agreement on contract terms and conditions within 30 days of the date of the Commission award may result in award of the contract to the next highest ranked proposer, or re-advertising and re-selecting consultants at the discretion of the City; and

WHEREAS, The firm being awarded a contract by the SFPUC must be in compliance with the Equal Benefits Provisions of Chapter 12B of the City's Administrative Code either at the time of the award, or within two weeks of the date of the Commission award; failure of the bidder to obtain compliance certification from CMD may, in the General Manager's sole discretion, result in award of the agreement to the next highest ranked proposer, or re-advertising and re-selecting consultants at the discretion of the City; and

WHEREAS, Funds for this agreement will be available at the time electric service to CleanPowerSF commences; now, therefore, be it

RESOLVED, That this Commission hereby approves the selection of Noble Americas Energy Solutions LLC ("Noble Americas"); awards CleanPowerSF Program-funded Agreement No. CS-247[R], Customer and Administrative Services for Community Choice Aggregation Program to Noble Americas, to provide specialized electricity data management, data exchange, billing, and customer care services to supplement SFPUC staff; and authorizes the General Manager of the SFPUC to negotiate and execute a professional services agreement with Noble Americas for an amount not to exceed \$5,600,000, and with a duration of three years, or, in the event negotiations are not successful or City requirements are not satisfied, to negotiate and execute a professional services agreement with the next highest ranked proposer.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of August 11, 2015.

A handwritten signature in cursive script, appearing to read "Monna Wood", is written above a horizontal line.

Secretary, Public Utilities Commission

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 17-0013

WHEREAS, On August 11, 2015, per Resolution No. 15-0175, this Commission awarded Agreement No. CS-247[R], Customer and Administrative Services for Community Choice Aggregation Program, and authorized the General Manager of the San Francisco Public Utilities Commission (SFPUC) to negotiate and execute a professional services agreement in the amount of \$5,600,000 and with a term of three years, concluding on October 31, 2018, with Noble Americas Energy Solutions LLC (hereinafter "Assignor"), to provide meter data management, billing, and customer care services for CleanPowerSF, a community choice aggregation program; and

WHEREAS, Noble Americas Energy Solutions, LLC changed its name under Articles of Amendment to Calpine Energy Services LLC on December 1, 2016; and

WHEREAS, On January 10, 2017, a Contribution and Assignment of Rights Agreement was filed that transferred business activity from Assignor to Calpine Energy Services LLC (hereinafter "Assignee"). Assignee assumed all obligations and liabilities under the Agreement and became a party to the Agreement; and

WHEREAS, Assignor desires to assign the Agreement and Assignee desires to assume the Agreement, each on mutually agreed-upon terms and conditions; and

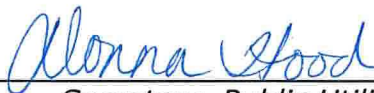
WHEREAS, The Assignee can meet the minimum qualifications as set forth in the original Request for Proposals; and

WHEREAS, Assignor is currently performing services that are needed to continue providing meter data management, billing, and customer care services for CleanPowerSF. The project team has concluded that Assignee is the only consultant that could readily perform these services without causing severe disruption to the continued operation of the program; moreover, background resources required to complete these services would be lost if the City was required to competitively procure the contract again; and

WHEREAS, All the terms and conditions of the Agreement remain in full force and effect; now, therefore, be it

RESOLVED, That this Commission hereby approves the assignment and assumption of Agreement No. CS-247[R], Customer and Administrative Services for Community Choice Aggregation Program, and authorizes the General Manager of the SFPUC to negotiate and execute an Assignment and Assumption Agreement in a form approved by the City Attorney.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of January 24, 2017.



Secretary, Public Utilities Commission

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 18-0090

WHEREAS, On August 11, 2015, per Resolution No. 15-0175, this Commission awarded Agreement No. CS-247[R], Customer and Administrative Services for Community Choice Aggregation Program, and authorized the General Manager of the San Francisco Public Utilities Commission (SFPUC) to negotiate and execute a professional services agreement in the amount of \$5,600,000 and with a term of three years, concluding on October 31, 2018, with Noble Americas Energy Solutions LLC, to provide meter data management, billing, and customer care services for CleanPowerSF, a community choice aggregation program; and

WHEREAS, Agreement No. CS-247[R] provided the City the option to extend the contract for three years at the City's sole and absolute discretion;

WHEREAS, On January 24, 2017, this Commission approved the assignment and assumption of Agreement No. CS-247[R] from Noble Americas Energy Solutions LLC to Calpine Energy Solutions LLC (hereinafter "Calpine"); and

WHEREAS, Calpine is currently performing services that are needed to continue providing meter data management, billing, and customer care services for CleanPowerSF. The project team has concluded that Calpine is the only consultant that could readily perform these services without causing severe disruption to the continued operation of the program; moreover, background resources required to complete these services would be lost if the City was required to competitively procure the contract again; and


WHEREAS, Amendment No. 1 would increase the cost by \$14,030,000, increasing the total not-to-exceed agreement amount to \$19,630,000, and extend the term of the agreement by three years to October 31, 2021, for a total agreement duration of six years, for continued support of the CleanPowerSF program; and

WHEREAS, The Contract Monitoring Division (CMD) established a subconsulting requirement of 5% Local Business Enterprise (LBE) participation for this agreement; and

WHEREAS, Funds for this agreement are available from CleanPowerSF revenues; now, therefore, be it

RESOLVED, That this Commission hereby approves Amendment No. 1 to Agreement No. CS-247[R], Customer and Administrative Services for Community Choice Aggregation Program, and authorizes the General Manager of the SFPUC to submit the agreement to the Board of Supervisors for approval pursuant to Charter Section 9.118, and on Board of Supervisors' approval to execute this amendment increasing the amount of the agreement by \$14,030,000, for a total not-to-exceed agreement amount of \$19,630,000, and extending the term by three years, for a total agreement duration of six years.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of May 22, 2018.



Secretary, Public Utilities Commission

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 21-0092

WHEREAS, On August 11, 2015, per Resolution No. 15-0175, this Commission awarded Agreement No. CS-247[R], Customer and Administrative Services for Community Choice Aggregation Program, to Noble Americas Energy Solutions LLC, and authorized the General Manager of the San Francisco Public Utilities Commission (SFPUC) to negotiate and execute a professional services agreement in the amount of \$5,600,000 and with a term of three years, to provide meter data management, billing, and customer care services for CleanPowerSF, a community choice aggregation program; and

WHEREAS, Agreement No. CS-247[R] provided the City up to two options to extend the contract for three years, with the total duration of the agreement not-to-exceed nine years; and

WHEREAS, The option to extend Agreement No. CS-247[R] is at the City's sole and absolute discretion; and

WHEREAS, On January 24, 2017, by Resolution No. 17-0013, this Commission approved the assignment and assumption of Agreement No. CS-247[R] from Noble Americas Energy Solutions LLC to Calpine Energy Solutions LLC (hereinafter "Calpine"); and

WHEREAS, On May 22, 2018, by Resolution No. 18-0090, this Commission approved Amendment No. 1, increasing the agreement amount by \$14,030,00 for a total not-to-exceed amount of \$19,630,000, and extending the term of the agreement by three years for a total agreement duration of six years, subject to approval by the Board of Supervisors under Charter Section 9.118; and

WHEREAS, On July 17, 2018, by its Resolution No. 249-18, the San Francisco Board of Supervisors approved Amendment No. 1, increasing the agreement amount by \$13,169,225 for a total not-to-exceed amount of \$18,769,225, and extending the term of the agreement by three years for a total agreement duration of six years; and

WHEREAS, On August 1, 2019, the SFPUC entered into Amendment No. 2 to the Agreement to provide the SFPUC the use of ClickDimensions' email marketing and campaign automation services on a trial basis, with no change to the agreement amount or duration; and

WHEREAS, Calpine is currently performing services that are needed to continue providing meter data management, billing, and customer care services for CleanPowerSF; and

WHEREAS, Amendment No. 3 is being requested to increase the agreement amount by \$13,876,200, and extend the term of the agreement by three years for continued support of the CleanPowerSF program, for a total not-to-exceed agreement amount of \$32,645,425 and a total duration of nine years, subject to approval by the Board of Supervisors under Charter Section 9.118(b); and

WHEREAS, Amendment No. 3 would also expand the use of ClickDimensions' services at no additional markup to the CleanPowerSF program; and

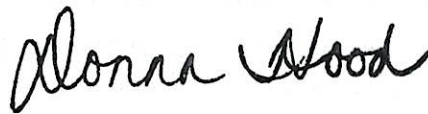
WHEREAS, The Contract Monitoring Division (CMD) established a subconsulting requirement of 5% Local Business Enterprise (LBE) participation for this agreement; and

WHEREAS, Funds for this agreement are available from CleanPowerSF Operating Budget; now, therefore, be it

RESOLVED, That this Commission hereby approves Amendment No. 3 to Agreement No. CS-247[R], Customer and Administrative Services for Community Choice Aggregation Program, with Calpine Energy Solutions LLC, for continued meter data management, billing, and customer care support of the CleanPowerSF program; and be it

FURTHER RESOLVED, That the Commission authorizes the General Manager to submit Amendment No. 3 to the Board of Supervisors for approval pursuant to Charter Section 9.118, and upon Board of Supervisors' approval, to execute this amendment increasing the agreement amount by \$13,876,200 and extending the term by three years for a total not-to-exceed agreement amount of \$32,645,425 and a total agreement duration of nine years.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of June 8, 2021.

A handwritten signature in black ink, reading "Donna Wood". The signature is written in a cursive, flowing style.

Secretary, Public Utilities Commission

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 24-0112

WHEREAS, On August 11, 2015, per Resolution No. 15-0175, this Commission awarded Contract No. CS-247(R), Customer and Administrative Services for Community Choice Aggregation Program, to Noble Americas Energy Solutions, LLC, and authorized the General Manager of the San Francisco Public Utilities Commission (SFPUC) to negotiate and execute a professional services contract in the amount of \$5,600,000 and with a term of three years, to provide meter data management, billing, and customer care services for CleanPowerSF, a community choice aggregation program; and

WHEREAS, On January 24, 2017, by Resolution No. 17-0013, this Commission approved the assignment and assumption of Contract No. CS-247[R] from Noble Americas Energy Solutions, LLC to Calpine Energy Solutions, LLC (hereinafter “Calpine”); and

WHEREAS, On May 22, 2018, by Resolution No. 18-0090, this Commission approved Amendment No. 1, increasing the contract amount by \$14,030,000 for a total not-to-exceed amount of \$19,630,000, and extending the term of the contract by three years for a total contract duration of six years; and

WHEREAS, On July 17, 2018, by its Resolution No. 249-18, the San Francisco Board of Supervisors approved Amendment No. 1, increasing the contract amount by \$13,169,225 for a total not-to-exceed amount of \$18,769,225, and extending the term of the contract by three years for a total contract duration of six years. The reason the dollar amount approved by the Board of Supervisors for Amendment No. 1 was less than the amount approved by the Commission was due to an accounting change allowing for carryover of funds from the first term; and

WHEREAS, On August 1, 2019, under the delegated authority of Resolution No.09-0017, the General Manager executed Amendment No. 2 to the Contract to provide the SFPUC the use of ClickDimensions’ email marketing and campaign automation services on a trial basis, with no change to the contract amount or duration; and

WHEREAS, On June 8, 2021, by Resolution No. 21-0092, this Commission approved Amendment No. 3, increasing the contract by \$13,876,200 and extending the duration by three years, and modifying the modified the scope of work to add automated email marketing capabilities to the customer relationship management system provided by Calpine, for a total not-to-exceed contract amount of \$32,645,425 and a total contract duration of nine years; and

WHEREAS, On July 30, 2021, by Resolution 362-21, the Board of Supervisors approved Amendment 3 to increase the contract amount by \$13,876,200, extend the term

of the contract by three years for continued support of the CleanPowerSF program, and expand the use of ClickDimensions' services at no additional markup up to the CleanPowerSF program; and

WHEREAS, Calpine is currently performing services that are critical and specialized services needed to continue providing meter data management, billing, and customer care services to CleanPowerSF customers; and

WHEREAS, Staff recommends this Commission approve Amendment No. 4, increasing the contract amount by \$2,500,000 and extending the duration by six months, to ensure the continuity of these essential business services as Staff complete a new competitive solicitation for meter data management, billing and customer care services, which is expected to result in a new three-year contract by October 2024. This Amendment is intended to cover the time required for a possible transition of these services to another provider, should it be necessary, and expand the use of ClickDimensions' services at no additional markup to the CleanPowerSF program, for a total not-to-exceed contract amount of \$35,145,425, and a total contract duration of nine years and six months; and

WHEREAS, Funds for this contract are available from the CleanPowerSF Operating Fund; now, therefore, be it

RESOLVED, That this Commission hereby approves Amendment No. 4 to Contract No. CS-247(R), Customer and Administrative Services for Community Choice Aggregation Program, with Calpine Energy Solutions, LLC, for continued meter data management, billing, and customer care support of the CleanPowerSF program, increasing the contract amount by \$2,500,000 and extending the contract duration by six months, for a total not-to-exceed contract amount of \$35,145,425, and a total contract duration of nine years and six months, subject to approval by the Board of Supervisors under Charter Section 9.118.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of May 14, 2024.

Cirilo Espinoza

Acting Commission Secretary, Public Utilities Commission

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 25-0054

WHEREAS, The San Francisco Public Utilities Commission (SFPUC) requires specialized professional services to perform electricity meter data management, billing, data exchange, and related technical services to support the operation of CleanPowerSF, the City and County of San Francisco's Community Choice Aggregation Program; and

WHEREAS, On June 12, 2024, the SFPUC advertised a Request for Proposals for Contract No. PRO.0297, SFPUC Customer Administrative Services Community Choice Aggregation Program, to procure services to provide comprehensive and integrated customer data management, billing, and data exchange services for CleanPowerSF; and

WHEREAS, The estimated costs of services is not-to-exceed \$17,000,000; and

WHEREAS, Services are anticipated to begin in May 2025 and end in May 2028, for a duration of 3 years; and

WHEREAS, SFPUC and Contract Monitoring Division (CMD) staff, upon review of the proposal scores, determined that Calpine Community Energy (Calpine) is the highest ranked firm based on the established scoring criteria; and

WHEREAS, CMD waived the Local Business Enterprise (LBE) subconsultant participation requirement for this contract; and

WHEREAS, Approval of this professional service contract by this Commission does not fall within the definition of a “project” under the California Environmental Quality Act Guidelines section 15378 as the services provided do not involve any direct or indirect physical change in the environment; and

WHEREAS, Funds for Contract No. PRO.0297, SFPUC Customer Administrative Services Community Choice Aggregate Program, will be available from Hetch Hetchy CleanPowerSF Operations Fund; now, therefore, be it

RESOLVED, That this Commission hereby awards Contract No. PRO.0297, SFPUC Customer Administrative Services Community Choice Aggregate Program, to Calpine Community Energy, for an amount not-to-exceed \$17,000,000, and with a duration of 3 years, subject to the Board of Supervisors approval pursuant to Charter Section 9.118; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to enter into any amendments or modifications to the contract that the General Manager determines, in consultation with the City Attorney, are in the best interest of the City, do not materially increase the obligations or liabilities of the City or materially diminish the benefits to the City, are necessary or advisable to effectuate the purposes and intent of this resolution, and are in compliance with all applicable laws, including the City Charter.

I hereby certify that the foregoing resolution was adopted by the San Francisco Public Utilities Commission at its meeting of March 25, 2025.



*Director of Commission Affairs
San Francisco Public Utilities Commission*



San Francisco Ethics Commission

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

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 250331

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

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

A Public Document

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

1. FILING INFORMATION

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

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Yasmin Khalil	(415) 551-4564
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
PUC Power	ykhalil@sfgwater.org

5. CONTRACTOR	
NAME OF CONTRACTOR Calpine Community Energy LLC	TELEPHONE NUMBER 1-877-273-6772
STREET ADDRESS (including City, State and Zip Code) 401 West A Street, Suite 500, San Diego, CA 92101	EMAIL

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 250331
DESCRIPTION OF AMOUNT OF CONTRACT \$17,000,000		
NATURE OF THE CONTRACT (Please describe) <p>This contract is to provide back-office services necessary to operate CleanPowersF, the City's Community Choice Aggregation (CCA) program. This includes comprehensive customer care, account management, billing, and data services for the program. This allows for the tracking of participating customers, recording electric usage and billings via electronic data exchange with PG&E, and supporting the PUC's customer care call center in handling CCA related calls.</p>		

7. COMMENTS

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

9. AFFILIATES AND SUBCONTRACTORS

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

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Novotny/Calpine	Andrew	CEO
2	Rauf/Calpine	Zamir	CFO
3	Hill/Calpine	Thad	Other Principal Officer
4	Chandrasekaran/Calpine	Hari	Other Principal Officer
5	Del Casale/Calpine	Mike	Other Principal Officer
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9. AFFILIATES AND SUBCONTRACTORS

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

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

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

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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☐ Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.

10. VERIFICATION

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

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

SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK

DATE SIGNED

BOS Clerk of the Board



FROM: Jeremy Spitz, Policy and Government Affairs

DATE: March 31, 2025

SUBJECT: [Professional Services Agreement - Calpine Energy Solutions LLC - Community Choice Aggregation Program - Not to Exceed \$17,000,000]

Please see attached a proposed Resolution approving and authorizing the General Manager of the San Francisco Public Utilities Commission to execute Contract No. PRO.0297, SFPUC Customer Administrative Services Community Choice Aggregation Program, with Calpine Community Energy, a Division of Calpine Energy Solutions, LLC, in the amount not to exceed \$17,000,000, and with a duration of three years, starting April 30, 2025 through April 30, 2028, to provide meter data management, billing, and customer care services, pursuant to Charter Section 9.118.

The following is a list of accompanying documents:

- Proposed Resolution (Word Doc Version)
- Draft Agreement (Word Doc Version)
- Form 126 (PDF Version)
- Executed Agreement (PDF Version)
- Executed Amendment No. 4 (PDF Version)
- SFPUC Resolution No.15-0175 (PDF Version)
- SFPUC Resolution No.17-0013 (PDF Version)
- SFPUC Resolution No.18-0090 (PDF Version)
- SFPUC Resolution No.24-0112 (PDF Version)
- SFPUC Resolution No.25-0054 (PDF Version)

Please contact Jeremy Spitz at jspitz@sfgwater.org if you need any additional information on these items.

Daniel L. Lurie
Mayor

Kate H. Stacy
President

Joshua Arce
Vice President

Avni Jamdar
Commissioner

Steve Leveroni
Commissioner

Dennis J. Herrera
General Manager

