



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:

- | | |
|---|---------------------------------------|
| 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:

- | | |
|---|---|
| 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.

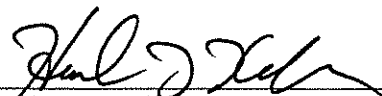
63. Reserved. (PCI Requirements)

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.

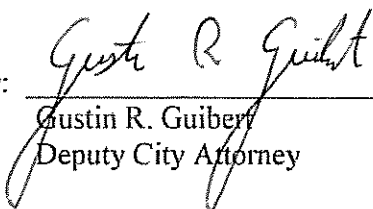
CITY

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:

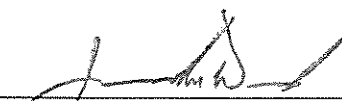

Jaci Fong
Director of the Office of Contract
Administration, and
Purchaser

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.