

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

**Agreement between the City and County of San Francisco and**

**NEWCOMB ANDERSON MCCORMICK**

This Agreement is made this **15<sup>th</sup> Day of April, 2016**, in the City and County of San Francisco, State of California, by and between **Newcomb Anderson McCormick, 201 Mission Street, Suite 2000, San Francisco, CA 94105** (“Contractor”) and City.

**RECITALS**

WHEREAS, the Department of the Environment (“Department”) wishes to obtain professional services in support of the Department’s energy and climate programs; and,

WHEREAS, City issued a Request for Proposal (“RFP”) on July 23, 2015, and subsequently selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, there is no Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 48830-14/15 on August 17, 2015;

WHEREAS, funding for portions of the Work under this Agreement will be provided through the San Francisco Energy Watch (SFEW) program with PG&E as approved by the California Public Utilities Commission in Decision D 09-09-047 dated September 24, 2009 and subsequent Rulings ordered under that Decision; and

Now, THEREFORE, the parties agree as follows:

## **ARTICLE 1 DEFINITIONS**

The following definitions apply to this Agreement:

1.1 "Agreement" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein.

1.2 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and the "Department of the Environment."

1.3 "CMD" means the Contract Monitoring Division of the City.

1.4 "Contractor" or "Consultant" means Newcomb Anderson McCormick, 201 Mission Street, Suite 2000, San Francisco, CA 94105.

1.5 "Deliverables" means Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.

1.6 "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.7 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations upon Contractor.

1.8 "Party" and "Parties" mean the City and Contractor either collectively or individually.

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

1.10 "SFEW" or "SFEW Program" means the San Francisco Energy Watch program implementing the Energy Use and Demand Reduction program funded by the California Public Utilities Commission through Pacific Gas and Electric Company.

## ARTICLE 2 TERM OF THE AGREEMENT

**2.1** The term of this Agreement shall commence on the latter of: (i) June 1, 2016; or (ii) the Effective Date, and shall expire on June 1, 2021, unless earlier terminated as otherwise provided herein.

## ARTICLE 3 FINANCIAL MATTERS

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

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

**3.2 Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

### **3.3 Compensation.**

**3.3.1 Payment.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Director of the Department of the Environment, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to

the invoice exists. In no event shall the amount of this Agreement exceed **FORTY-FOUR MILLION DOLLARS (\$44,000,000)**, which shall consist of up to \$14,000,000 in compensation to the Contractor and the remainder in cash rebates to pay to be paid to PG&E customers for qualifying energy saving upgrades to commercial and residential property in San Francisco. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In no event shall City be liable for interest or late charges for any late payments.

**3.3.2 Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until the Department of the Environment approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

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

**3.3.4 Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City to Contractor at the address specified in Section 11.1, "Notices to the Parties," or in such alternate manner as the Parties have mutually agreed upon in writing.

**3.3.5 Reserved (LBE Payment and Utilization Tracking System)**

**3.3.6 Getting paid for goods and/or services from the City.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through Paymode-X, the City's third party service that provides Automated Clearing House (ACH) payments. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the

company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

### **3.3.7 Grant Funded Contracts.**

(a) **Disallowance.** If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement between Contractor and City.

(b) **Funding Terms.** The funding for the SFEW work performed under this Agreement is provided through a contract with PG&E as approved by the California Public Utilities Commission. As part of the terms of receiving the funds, the City is required to incorporate some of the terms into this Agreement. The incorporated terms may be found in Appendix C, "PG&E Exhibits." Contractor agrees to be bound by the terms and conditions of Appendix C.

**3.4 Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts. Records related to work under any task order funded in whole or in part through the SFEW Program shall be subject to audit by duly authorized employees or agents of the California Public Utilities Commission and/or PG&E.

**3.5 Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;

(b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

## **ARTICLE 4 SERVICES AND RESOURCES**

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

**4.2 Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

**4.3 Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. All Subcontracts must also incorporate the terms of Appendix C, "PG&E Exhibits," of this Agreement. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. City's execution of this Agreement constitutes its approval of the subcontractors listed below:

Ecology Action

Stone Energy Associates

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

**4.4.1 Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent, employee, or subcontractor

of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent, employee, or subcontractor 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, employees, and subcontractors will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee or subcontractor 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 or subcontractor of Contractor is liable for the acts and omissions of itself, its employees, its agents, and subcontractors. 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 or subcontractor 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 or subcontractor of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee or subcontractor 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 or subcontractor 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.

Nothing in this Agreement or any Task Order funded in whole or part through San Francisco Energy Watch (SFEW) shall create any contractual relations between Contractor or its subcontractors and PG&E. All persons, if any, hired by Contractor shall be employees or subcontractors of Contractor and shall not be construed as employees or agents of PG&E in any respect.

**4.4.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall

be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to 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, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

**4.5 Assignment.** The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

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

**4.7 Left Blank by Agreement of the Parties (Liquidated Damages)**

**4.8 Bonding Requirements.**

**4.8.1 Payment and Performance Bond.** Whenever Contractor directly, or through a subcontractor, intends to spend over \$100,000 on materials or equipment, City may require Contractor to obtain a payment and performance bond at City's cost, from a surety acceptable to City, in the amount specified by City for up to 100 percent of the cost of materials or equipment ordered by Contractor or its subcontractor(s). Contractor shall obtain such bond within 15 days of City's request. City shall reimburse Contractor based on the surety company's invoice. .

**4.8.2 Fidelity Bond for Incentive Advances** Wherever Contractor receives advances under this Agreement or Task Orders issued hereunder for the payment of rebates or other incentives or for any other reason, City may require Contractor to obtain and maintain in force a fidelity bond naming the City as payee or obligee in a form acceptable to the



City's Risk Manager and in an amount that City reasonably determines would cover the risk of loss, misuse or misappropriation of such advance.

**4.9 Time is of the Essence.** Contractor shall commit adequate resources to complete the Work with the project schedule specified in this Agreement and Task Orders issued hereunder.

## **ARTICLE 5 INSURANCE AND INDEMNITY**

### **5.1 Insurance.**

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

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

(b) 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

(c) 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. Coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code 1, "any auto".

(d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim/\$2,000,000 aggregate with respect to negligent acts, errors or omissions in connection with the Services.

**5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide the following:**

(a) With respect to work performed under the SFEW, coverage shall: (A) by "Additional Insured" endorsement name as Additional Insureds both City and PG&E, and their officers, managers, directors, agents and employees, and PG&E's affiliates, subsidiaries, and parent company, with respect to liability arising out of or connected with the Work performed under this Agreement. In the event the Commercial General Liability policy includes a 'blanket endorsement by contract', the following language shall be listed under the Policy endorsement schedule: "City and PG&E, and their officers, managers, directors, agents and employees, and PG&E's affiliates, subsidiaries, and parent company with respect to liability

arising out of or connected with the Work performed under this Agreement are additional insured under a blanket endorsement.” (B) With respect to tasks not reimbursable under SFEW, coverage shall name as Additional Insured the City and County of San Francisco, it’s Officers, Agents, and Employees.

(b) Coverage shall be endorsed to specify that Contractor’s 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, and that any insurance or self-insurance maintained by City or PG&E shall not contribute with it.

**5.1.3** All policies shall be endorsed to provide thirty (30) days advance written notice to the City (and with respect to work performed under SFEW, to PG&E) of reduction or nonrenewal of coverages or cancellation of coverages for any reason, . Notices signed by a person authorized by that insurer to bind coverage on its behalf, and copies of insurance documents shall be sent to City at the address specified in Section 11.1, entitled “Notices to the Parties.”

**5.1.4** 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.

**5.1.5** 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.

**5.1.6** 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.

**5.1.7** Before commencing any operations under this Agreement, Contractor shall do the following: (A) furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above, and (B) permit inspection of the original policies or furnish complete certified copies of the policies promptly at any time upon request of City. Failure to maintain

insurance shall constitute a material breach of this Agreement. . Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

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

**5.1.9** If Contractor will use any subcontractor(s) complete any portion of this agreement, the Contractor shall ensure that the subcontractor(s) shall provide all necessary insurance and shall name PG&E, and its officers, managers, directors, agents and employees, and PG&E's affiliates, subsidiaries, and parent company, the City and County of San Francisco, its boards, commissions, officers, and employees and the Contractor listed as additional insureds.

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

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

**5.2.2 Infringement Protection.** Contractor warrants to City that the material to be prepared under this Agreement will not infringe upon the copyright, patent or license, or otherwise violate the proprietary rights, including trade secret rights, of any person or entity. Royalties, license fees or other charges for patents, copyrights, licenses or other intellectual property for designs, processes, machinery, equipment, technology, published or unpublished data, information or materials, including but not limited to, manuals, computer programs or other deliverables furnished by Contractor for the Work, or for processes or methods employed by Contractor in performing the Work, shall be included in the Contract prices. Furthermore, except where City or PG&E have provided Contractor materials and such provided materials are alleged to have infringed, Contractor agrees to indemnify and hold City, its boards, commissions, officers and employees and PG&E (including their officers, managers, directors, agents and

employees, and PG&E's affiliates, subsidiaries, and parent company) harmless from and against any and all liabilities, costs and damages arising out of any such infringement, and from any suit, demand or claim made against City or PG&E alleging any such infringement or violation. In addition to the foregoing, if there is any such suit, demand or claim, Contractor agrees at the option of City or PG&E (with respect to tasks funded by SFEW) and as soon as possible to either procure for City and PG&E the right to continue using the material, replace the material with non-infringing material, or modify it so it becomes non-infringing; provided, however that the replaced or modified material shall be equal to that contracted for hereunder and satisfactory to City and PG&E. Contractor further agrees to pay any judgment or reasonable settlement offer resulting from a suit, demand or claim, and pay any reasonable attorney's fees incurred by City and PG&E in defense against such suit.

## **ARTICLE 6 LIABILITY OF THE PARTIES**

**6.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

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

**6.3 Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## **ARTICLE 7 PAYMENT OF TAXES**

**7.1** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor

agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

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

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

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

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

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

## **ARTICLE 8 TERMINATION AND DEFAULT**

### **8.1 Termination for Convenience**

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

**8.1.2** Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and

City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

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

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

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

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

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

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

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

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

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

**8.1.4** In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

**8.1.5** In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

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

**8.2 Termination for Default; Remedies.**

**8.2.1** Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

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

3.5	Submitting False Claims.	10.4	Nondisclosure of Private, Proprietary or Confidential Information
4.5	Assignment	10.10	Alcohol and Drug-Free Workplace
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes		

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or

reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

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

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

**8.2.3** All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

**8.2.4** Any notice of default must be sent by registered mail to the address set forth in Article 11.

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



## 8.4 Rights and Duties upon Termination or Expiration.

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

3.3.2	Payment Limited to Satisfactory Services	9.1	Ownership of Results
3.3.7(a)	Grant Funded Contracts - Disallowance	9.2	Works for Hire
3.4	Audit and Inspection of Records	10.4	Nondisclosure of Private, Proprietary or Confidential Information
3.5	Submitting False Claims	11.6	Dispute Resolution Procedure
Article 5	Insurance and Indemnity	11.7	Agreement Made in California; Venue
6.1	Liability of City	11.8	Construction
6.3	Liability for Incidental and Consequential Damages	11.9	Entire Agreement
Article 7	Payment of Taxes	11.10	Compliance with Laws
8.1.6	Payment Obligation	11.11	Severability

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

## ARTICLE 9 RIGHTS IN DELIVERABLES

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors, in connection with Work funded exclusively under SFEW ("PG&E Results") become, after approval and acceptance by City, the property of PG&E.. 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 tasks under this Agreement that are not solely funded under SFEW, ("City Results") shall become the property of and will be transmitted to City. Neither Contractor nor its Subcontractors shall retain any property rights in PG&E Results or City Results. Contractor shall transmit PG&E Results and City Results to City for its inspection, approval and acceptance and shall fully cooperate and do all things reasonably

necessary to allow PG&E and/or City and/or to claim sole ownership of the Results. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**9.2 Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). City shall, to the extent required by the City's contract with PG&E for the SFEW Program, assign all its right, title, and interest in the patents, copyrights and other intellectual property rights in such works to PG&E. With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

**9.3 No Publicity.** Contractor shall not include, and shall direct its Subcontractors not to include, PG&E's name, any reference to this Contract or the SFEW Program, or any reference to PG&E's purchase or use of any products or services provided by Contractor (or Subcontractor) in Contractor's published customer list or in other publicity or advertisement, including internet, without the prior written consent of an officer of PG&E. The fact the Parties have entered into this Contract does not constitute, nor imply in any way, an endorsement of Contractor by PG&E, and Contractor will not state or imply that PG&E endorses, recommends, or vouches for Contractor in any form of written, verbal, or electronic advertisement, communication, or any other business development effort.

**9.3.1 Copyright Notice.** With respect to tasks funded by SFEW, Contractor shall place the following notice in the locations specified by PG&E on all marketing and promotional materials, all other materials for distribution to the general public and all other materials created in connection with services performed under this Agreement that the PG&E Project Manager designates:

- (a) The copyright symbol or the word "Copyright" followed by the year in which the material is produced and the words "Pacific Gas and Electric Company;" and
- (b) The text, "Funding for these materials is provided by California utility customers and administered by Pacific Gas and Electric Company, under the auspices of the California Public Utility Commission."

**9.4 License of Pre-existing Material.** The term “Contractor Property” shall mean all pre-existing material, including, but not limited to, any products, software, materials and methodologies proprietary to Contractor and provided by Contractor or its suppliers and any trade secrets, know-how, methodologies and processes related to Contractor’s products or services, all of which shall remain the sole and exclusive property of Contractor or its suppliers. Subject to the receipt of payment in full and to the terms of this Agreement, Contractor grants to the City a non-exclusive, non-transferable, perpetual license to use Contractor Property contained in any deliverables required under Appendix A, “Services to be Provided by Contractor.”

## **ARTICLE 10     ADDITIONAL REQUIREMENTS INCORPORATED BY REFERENCE**

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at [www.sfgov.org](http://www.sfgov.org) under “Government.”

**10.2 Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

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

### **10.4 Nondisclosure of Private, Proprietary or Confidential Information.**

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

**10.4.2** 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 (including trade secrets and confidential information about specific PG&E Customers within the meaning of City's SFEW Agreement with PG&E) and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City and/or PG&E. Contractor agrees to hold all such information disclosed by City or PG&E to Contractor in confidence and to use, or require its subcontractors to use such information solely for the purpose of performing services and Work under this Agreement and in the manner specified in this 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. Contractor shall require its employees and the employees its subcontractors, who will perform Work or services funded by SFEW under this Agreement to sign a non-disclosure agreement in the form attached hereto as Appendix C, and shall deliver the signed original copies to City.

Contractor's duty to protect information described in the paragraph immediate above does not apply to information that: (a) was in the public domain at the time it was disclosed or falls within the public domain, except through a breach of this Agreement; or (b) is or becomes known by the Contractor or any of its associated companies from a source other than the City or PG&E without breach of this Agreement by the Contractor; or (c) is required by law, but only to the extent that such disclosure is so required by law, and only after the City has been notified in writing and has been provided a reasonable opportunity to take appropriate action to protect its legal interest in the Confidential Information.

**10.4.3** Contractor shall utilize PG&E's approved data transfer protocols to transfer any confidential proprietary information obtained from or about PG&E and its customers, including but not limited to any information or data containing PG&E Customer account numbers.

## **10.5 Nondiscrimination Requirements**

**10.5.1 Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses

of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

**10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

**10.6.1 PG&E Supplier Diversity Program.** To the extent consistent with federal, state and local laws applicable to this Agreement and with respect to tasks funded by SFEW, Contractor shall comply with PG&E's Supplier Diversity Purchasing Policy and Policy Regarding Utilization of Small Business Concerns and Small Disadvantaged Business concerns, attached as Appendix C, Exhibit 1 and 2 to this Agreement.

**10.7 Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

**10.8 Health Care Accountability Ordinance.** Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

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

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

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program

that includes employee notification and, as appropriate, rehabilitation. Contractor may comply with this requirement by implementing a drug-free workplace program that complies with the California Drug-Free Workplace Act of 1990 (Cal. Gov. Code, § 8350 et seq.).

**10.11 Limitations on Contributions.** By executing 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. 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. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

**10.12 Reserved (Slavery Era Disclosure)**

**10.13 Reserved (Working with Minors)**

**10.14 Consideration of Criminal History in Hiring and Employment Decisions**

**10.14.1** Contractor agrees to comply fully with and be bound by all of the provisions of 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 <http://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.

**10.14.2** 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, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.15 Reserved (Public Access to Nonprofit Records and Meetings)**

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

**10.17 Reserved (Sugar-Sweetened Beverage Prohibition)**

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

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

**ARTICLE 11 GENERAL PROVISIONS**

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

To City: Department of the Environment  
1455 market Street, #1200  
San Francisco, CA 94103  
Attn: Jessie Denver,  
Energy Program Manager  
jessie.denver@sfgov.org

To Contractor: Newcomb Anderson McCormick  
201 Mission Street, Suite 2000  
San Francisco, CA 94105  
Attn: Jonathon W. Stage, Director  
stage@newcomb.cc

Any notice of default must be sent by registered mail, or by an overnight delivery service or by courier. Either Party may change the address to which notice is to be sent by giving written

notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

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

**11.3 Reserved (Payment Card Industry (“PCI”) Requirements)**

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

**11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, “Notices to Parties,” regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement.

**11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10



and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

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

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

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

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

**11.10.1** Unless prohibited by law, Contractor shall hold City, its boards, commissions, officers and employees (and with respect to tasks funded by SFEW, shall hold PG&E, including its officers, managers, directors, agents and employees, and PG&E's affiliates, subsidiaries, and parent company) harmless from any liability, fine or penalty incurred as a result of Contractor's failure to comply with applicable legal and regulatory requirements, local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**11.11 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (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.

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

## **ARTICLE 12 MACBRIDE AND SIGNATURE**

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

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

**CITY**

**CONTRACTOR**

Recommended by:

Newcomb Anderson McCormick, Inc.

\_\_\_\_\_  
Deborah O. Raphael, Director  
Department of the Environment

\_\_\_\_\_  
By

\_\_\_\_\_  
Name

Approved as to Form:

\_\_\_\_\_  
Title

Dennis J. Herrera  
City Attorney

Newcomb Anderson McCormick, Inc.  
201 Mission Street, Suite 2000  
San Francisco, CA 94105

By: \_\_\_\_\_  
Thomas J. Owen  
Deputy City Attorney

City vendor number: 69790

Approved:

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

**Appendices**

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: PG&E Funding Terms

## Appendix B Calculation of Charges

### 1. Time and Materials Payments

#### **Rate Escalator**

This contract extends until June 1, 2021. Billing rates for all staff classifications listed in this Appendix B shall apply as of the effective date of this Agreement and extend through May 31, 2017. Beginning June 1, 2017, and for each subsequent twelve-month period through the term of the contract, billing rates may be increased by the amount of increase in the US Bureau of Labor Statistics, Consumer Price Index, CWURA422SAO, San Francisco Bay Area for Urban Wage Earners and Clerical Workers, not seasonally adjusted. The increase shall be based on the increase of December, 2017 over December, 2016 for the first calculation. Each following year's calculation will be based on a December to December comparison.

The increase shall not exceed a 3% increase over the prior year's base rate.

Contractor must submit a request for an increase in billing rates at least 90 days prior to each June 1 start date in order to receive increased rates for the full twelve-month period. The request must include documentation from the US Bureau of Labor Statistics website.

**Materials/Other Direct Costs:** Contactor must provide receipts and/or other documentation of proof of expenditures for charges for materials purchased in performance of project tasks and for other direct costs. Direct charges shall be invoiced at cost.

**Subcontractor Costs:** Contractor's invoice must include all Subcontractor charges including subcontractor(s)' invoice(s) for time as defined above, and receipts and/or other documentation of proof of expenditures for materials and other direct costs. Contractor's invoice may include an additional administrative fee of 5% on Subcontractor costs, listed clearly as a separate charge.

<b>Newton Anderson McCormick</b>			
<b>Staff</b>	<b>Title</b>	<b>Labor Category</b>	<b>Hourly Rate</b>
John M. Newcomb	Principal	Contract Management	\$195.00
Michael K.J.Anderson	Principal	Chief Engineer & Technical QA/QC Oversight	\$195.00
Ann L. McCormick	Principal	Program Design, Regulatory Policy, & Evaluation Lead	\$195.00
Matt J. Sullivan	Principal	Program Design, Regulatory Policy, & Evaluation Support	\$195.00

<b>Newton Anderson McCormick cont'd</b>			
<b>Staff</b>	<b>Title</b>	<b>Labor Category</b>	<b>Hourly Rate</b>
Jonathon W. Stage	Director	Lead program Manager	\$180.00
Kyle B. Manahan	Director	Contractor Management Support	\$180.00
Lance C. Kincaid	Sr. Engineer	Technical Lead Application QA/QC & Inspections	\$175.00
Danny W. MacRostie	Sr. Engineer	Technical Support Application QA/QC & Inspections	\$175.00
Dominic Molinari	Mechanical Engineer	Turnkey Technical Support	\$140.00
Agatha Vaaler	Sr. Program Manager	Marketing Advisor	\$160.00
Joshua S. Babcock	Program Manager	Database Lead – Design, Tracking and Reporting	\$160.00
Karen T. Lee	Energy Engineer	QA/QC, Payment and Invoicing Support for EA Lead	\$130.00
Shira Zingman-Daniels	Energy Engineer	QA/QC, Payment and Invoicing Support for EA Lead	\$130.00
Liz Balke	Energy Engineer	QA/QC, Payment and Invoicing Support for EA Lead	\$130.00
Ben Laboy	Energy Engineer	QA/QC, Payment and Invoicing Support for EA Lead	\$130.00
Danielle Moultak	Project Manager	QA/QC, Payment and Invoicing Support for EA Lead	\$140.00
Colin W. Joy	Project Manager	Database Tracking & Reporting	\$140.00
Ryan Berg	Project Manager	Database Tracking & Reporting	\$140.00
Jena Leipold	Administrative Assistant	Incentive Processing	\$80.00

## Subcontractor Rates

<b>Ecology Action</b>			
<b>Staff</b>	<b>Title</b>	<b>Labor Category</b>	<b>Hourly Rate</b>
Scott Farmer	Sr. Program Manager	Lead Project Manager	\$140.00
Kisha Christal-Negus	Director of Energy Consulting Services	Contractor Recruitment, Training & Management	\$160.00
Chris Vance	VP of Engineering	Program Design, Municipal & Large Commercial	\$185.00
Mahlon Aldridge	VP	Program Design, Regulatory & Policy	\$190.00
Colin Clark	Sr. Program Manager	Residential Program Lead	\$125.00
Richard Ma	Sr. Energy Engineer	QA/QC Manager – Large Customized Projects	\$140.00
Greg Copley	Sr. Quality Assurance Manager	QA/QC Manager – Small to Medium Projects, Direct Install	\$115.00
Jennifer McNeil	Director of Operations	Installation Management, Oversight	\$160.00
Josiah Adams	Director of Policy and Analytics	Technical, Measure & Regulatory Support (T24, DEER, MCL)	\$160.00
Sharon Evans	Accountant	Incentive Processing Lead	\$100.00
Meggan Wenbourne	Accountant Assistant	Incentive Processing Support	\$ 65.00
Danielle Kish	Installation Manager	QA/QC Support	\$ 80.00

Stone Energy Associates			
Staff	Title	Labor Category	Hourly Rate
Nemiah Stone	Principal	Multi-Family Program Design Lead	\$215.00

**Markup for Subcontractor rates is 5%**

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.

**2. Incentive Payment**

\$491.00 each

Services included for each payment are: Tracking & Reporting  
Payment Processing  
QA/QC

**3. Incentive Payments**

City shall pay Contractor for the incentive portion of installation of energy savings measures based on actual costs of energy efficiency equipment and/or installation costs of eligible projects. Under no circumstances can incentive funds be used to cover administrative or other indirect costs. During the term of this agreement, City will pay incentives for projects governed by one or more funding sources; each funding source may have its own requirements for incentive payments and Contractor must comply with the applicable requirements. Contractor shall follow guidelines issued with Task Orders regarding eligibility, incentive levels, reporting requirements, and any other directives governing payment from specified funds.

**Incentive Advance Account:** City shall pay Contractor incentive payments due under this Agreement in advance ("Incentive Advance") as follows:

(i) Wherever City determines, in its discretion, that Contractor will be assigned tasks that include payment of incentives, City may pay Contractor up to \$1,000,000 to be used solely for payment by Contractor of incentives to its installation subcontractors, vendors, businesses or residents that become due and owing under the Agreement.

(ii) Contractor shall make incentive payments from the Incentive Advance to its installation subcontractors, vendors, businesses or residents as such payments become due and owing. Contractor will then invoice the City for such incentive payments made from the Incentive Advance.

(iii) Upon approval of such invoices, City shall restore to Contractor the invoiced amount, up to the original Incentive Advance balance, or such lesser amount as may remain in the program budget. When Contractor receives payment from the City for the incentive payments Contractor made from the Incentive Advance, Contractor shall promptly (and within no more than five business days) restore such amount to the Incentive Advance account to be utilized as provided in subsection (ii) above. At completion of the program (or depletion of the incentive payment budget), the Incentive Advance will have a zero balance.

**(iii) Contractor shall, at all times, maintain the Incentive Advance funds separate and apart from all of its other accounts. Contractor may not use or apply any portion of the Incentive Advance for any purpose other than payment of incentive payments due and owing to installation contractors, vendors, PG&E customers, or customers under other SF Environment programs.**

(iv) Monies received as Incentive Advance are subject to all provisions of the Agreement, including but not limited to, Section 3.3.2 "Payment Limited to Satisfactory Services," Section 3.3.4, "Invoice Format," and Section 3.4, "Audit and Inspection of Records."

#### **4. Payment Schedule**

City shall pay Contractor within 30 days of City approval of an invoice. Payments are contingent on the satisfactory completion of all time and material tasks and/or installation projects.



## **Appendix C – PG&E Funding Terms**

Contract No. MSA4400010199, dated February 26, 2016, as it may be amended from time to time, between City and Pacific Gas & Electric (PG&E), including all General and Specific Conditions, is attached to this Agreement, and is incorporated by this reference as though fully set forth.

In the performance of tasks under the PG&E Contract, Contractor agrees to be bound by the terms and provisions of the PG&E /CCSF Contract and to do or refrain from doing everything required of the City except for those provisions that under the terms of the Contract could only apply to the City. The requirements of the PG&E Contract include, but are not limited to, the requirements set out in the following exhibits to the Contract:

EXHIBIT 1	PG&E’S SUPPLIER DIVERSITY POLICY
EXHIBIT 1A	LIST OF SUBCONTRACTORS AND DISBURSEMENT RECORD
EXHIBIT 2	POLICY REGARDING UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS
EXHIBIT 3	INJURY AND ILLNESS PREVENTION PROGRAM COMPLIANCE CERTIFICATE
EXHIBIT 4	PG&E DRUG AND ALCOHOL ABUSE AND TESTING POLICIES
EXHIBIT 5	PG&E CONTRACTOR DOCUMENT RETENTION AND PRODUCTION REQUIREMENTS
EXHIBIT 5A	DOCUMENT AND DATA LIST
EXHIBIT 6	AUDIT RIGHTS
EXHIBIT 7	NERC REQUIREMENTS
EXHIBIT 7A	PG&E NERC CIP PROGRAM: NON-EMPLOYEE ATTESTATION FORM
EXHIBIT A	ESCALATED COMPLAINTS / SAFETY INCIDENTS
EXHIBIT B	CONFIDENTIALITY AND DATA SECURITY
EXHIBIT C	NON-DISCLOSURE AND USE OF INFORMATION AGREEMENT (“NDA”)

EXHIBIT D            CUSTOMER SATISFACTION

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EXHIBIT SC-B        ACCESS AGREEMENT

EXHIBIT GC-1        CONTRACTOR SAFETY PROGRAM

EXHIBIT GC-2        SUPPLIER CODE OF CONDUCT

## EXHIBIT 1

### PG&E'S SUPPLIER DIVERSITY POLICY

CONTRACTOR AND SUBCONTRACTORS OF ALL TIERS MUST COMPLY WITH PG&E'S SUPPLIER DIVERSITY POLICY IN THE AWARD OF ALL SUBCONTRACTS. This policy requires that Small, Women, Minority, and Disabled Veteran Business Enterprises (WMDVBEs), and Lesbian, Gay, Bisexual, and Transgender Business Enterprises (LGBTBEs) shall have the maximum practicable opportunity to participate in the performance of Work.

1. Contractor shall provide a copy of this Exhibit 1 to each prospective Subcontractor.
2. Women and Minority-owned Business Enterprises (WMBEs) must be verified pursuant to the procedures prescribed in Section 2 of CPUC General Order 156. Disabled Veteran-owned Business Enterprises (DVBEs) must be verified pursuant to the procedures prescribed by the Department of General Services. LGBTBEs must be verified pursuant to the procedures prescribed by The National Gay & Lesbian Chamber of Commerce®.
3. Contractor shall provide a separate, signed prime supplier plan (Exhibit 1A – List of Subcontractors and Disbursement Plan) consisting of a specific list of Subcontractors that will participate in the performance of the Work. Contractor shall also provide a statement setting forth (i) the Contractor's goals for WMDVBE and LGBTBE Subcontracting of all tiers and (ii) a description of the additional good faith efforts the Contractor and Subcontractors will employ to increase the participation of WMDVBE and LGBTBEs in the performance of the Work.
4. No later than the 10<sup>th</sup> of each month, Contractor shall submit its Subcontracting spend with WMDVBE- and LGBTBE-owned suppliers using PG&E's electronic reporting system located at the following address:  
<https://cvmas10.cvmsolutions.com/pge/default.asp>
  - a. To establish a User ID, Contractor shall submit a request via email to the following e-mail address: [PVB1@pge.com](mailto:PVB1@pge.com).
5. In addition, for Contracts exceeding \$500,000 (or \$1 million for construction contracts), the Contractor must comply with the Policy Regarding Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, as described in Exhibit 2. The Prime Supplier Plan for these Contracts must include provisions for implementing the terms of this Exhibit 1.
  - a. Small Business and Small Disadvantaged Business Prime Supplier Plans are not required for small business contractors, personal service contracts, contracts that will be performed entirely outside of the United States and its territories, or modifications to existing contracts which do not contain Subcontracting potential.
  - b. For all PG&E contracts, the Contractor shall act in accordance with the Prime Supplier Plan in the performance of the Work and in the award of all Subcontracts.
6. .



**List of Subcontractors and Disbursement Record**

**EXHIBIT 1-A**

Prime Contractor/Supplier:	Name of Preparer:		
PG&E Contract Number (if any):	Telephone: (       )		
PG&E Project/Product:	E-Mail:		
Contract Duration (Year):	From:	To:	Total Bid Value . Same as (9) below:

Name of Subcontractor (1)	WMDVBE /LGBTBE Status Code* (2)	V** (3)	NV*** (4)	Address (5)	Description of Work (6)	Estimated Amount to be Paid to Subcontractors (7)

\* Refer to Instructions/Codes/Definitions on page 2.

\*\* V = Subcontractor is a verified WMDVBE or LGBTBE

\*\*\* NV = Subcontractor is not a verified WMDVBE or LGBTBE

(8)	Estimated Total Amount to be Paid to All Verified WMDVBE and LGBTBE Subcontractor(s):	
(9)	Total Bid Value:	
(10)	Estimated Percentage to be Paid to All Verified WMDVBE and LGBTBE Subcontractor(s) (8÷9):	

**Certification Agencies:**

- WMBE: CPUC Clearinghouse :
- DVBE: Department of General Services
- LGBT: National Gay and Lesbian Chamber of Commerce (NGLCC)

Signature: \_\_\_\_\_ / Date

I hereby verify that the listed information is true and accurate to the best of my knowledge.

The successful bidder(s) will be expected to register and report all monthly subcontracting spending with verified WMDVBE and LGBTBE subcontractors for the duration of the contract at: <https://cvmas10.cvmsolutions.com/pge/default.asp>

**STEP-BY-STEP INSTRUCTIONS**

Complete column numbers 1-10 and return this form with your bid proposal . .

- (1) Include the complete name of the subcontractor.
- (2) Indicate the Subcontractor's minority code (see definitions and codes below).
- (3) Place a "V" in the box if the Subcontractor is a **verified** W MBE, DVBE, or LGBT supplier by the applicable certification agency (see above).
- (4) Place a "NV" in the box if the Subcontractor is **not verified by the applicable certification agency (see above)**.
- (5) Include the address, city, state and zip of the Subcontractor.
- (6) Describe the work that the Subcontractor will be performing.
- (7) Indicated the estimated amount to be paid to each Subcontractor for the duration of the contract.
- (8) Indicate the estimated total amount to be paid to all **verified** Subcontractors for the duration of the contract.
- (9) Indicate the proposed bid value.
- (10) Indicate the percentage of the bid value to be paid to all verified Subcontractors. Divide the estimated dollars to be paid to all **verified** WMDVBE and LGBT Subcontractors by the total bid value.

**DEFINITIONS AND CODES**

- WBE** Women Business Enterprise: A business enterprise that is at least 51 percent owned by a woman or women, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more of those individuals
- MBE** Minority Business Enterprise: A business enterprise that is at least 51 percent owned by a minority group or groups, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority-group individuals, and whose management and daily business operations are controlled by one or more of those individuals.
- DVBE** The same meaning as defined in subdivision (g) of the Military and Veterans Code and must meet the "Control" criteria. An enterprise which is 51 percent owned by a California Service Disabled , or the stock is 51 percent owned, by one or more disabled veterans, and whose management and daily operations are controlled by one or more of those individuals
- LGBT** A business enterprise that is at least 51 percent owned by a Lesbian, Gay, Bisexual, Transgender Enterprise (LGBTBE), or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more LGBTBE and whose management and daily business operations are controlled by one or more of those individuals.

Minority Codes:

001 African American Male	002 African American Female	003 Asian Pacific American Male	004 Asian Pacific Female
005 Native American Male	006 Native American Female	007 Hispanic American Male	008 Hispanic American Female
009 Caucasian Male	010 Caucasian Female	011 Multi-Status/Other Male	012 Multi-Status/Other Female
013 Small Business Enterprise	014 Service Disabled Business Enterprise	015 Do Not Use	016 Handicapped
017 Gay, Lesbian, Bisexual Transgender – Male		018 Gay, Lesbian, Bisexual Transgender - Female	

- African Americans** Persons having origin in any black racial group of Africa
- Asian Pacific Americans** Persons having origins in Asia or the Indian Subcontinent, including, but not limited to, persons from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, India, Pakistan, and Bangladesh.
- Native American** Persons having origin in any of the original peoples of North America or the Hawaiian Islands, in particular, American Indians, Eskimos, Aleuts, and Native Hawaiians
- Hispanic Americans** Persons of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, or other Spanish culture or origin
- Caucasian** Includes all people of European and North African descent.
- Multi-Status** An enterprise that is wholly owned and controlled by a combination of minorities or women but whose majority ownership (at least 51%) is not vested with any one of these individuals.
- Other Groups** Groups whose members are found to be socially and economically disadvantaged by the Small Business Administration pursuant to Section 8 (d) of the Small Business Act as amended (15 U.S.C. 637 (d)), or by the Secretary of Commerce pursuant to Section 5 of Executive Order 11625.
- Small Business Enterprise** A business defined pursuant to Section 3 of the Small Business Act (SBA) and relevant regulations pursuant thereto. If unsure, please contact your local Small Business Administration office for clarification.

## EXHIBIT 2

### POLICY REGARDING UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS

The following policy of the United States shall be adhered to in the performance of this Contract:

- a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal Agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.
- b) Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of Contractor's compliance with this clause.
- c) As used in this Contract, the term "small business concern" shall mean a small business as defined in Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern (1) which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirement of 13 CFR Part 124. Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act. Contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.
- d) Contractor acting in good faith may rely on written representations by its subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.<sup>1</sup>

<sup>1</sup>Notwithstanding this provision of the federal statute, all WMDVBE subcontractors must be verified pursuant to the procedures prescribed in Section 2 of CPUC General Order 156, as such procedures may be amended periodically.

**EXHIBIT 3**

**INJURY AND ILLNESS PREVENTION PROGRAM**

**Compliance Certificate**

The undersigned is an authorized representative of \_\_\_\_\_  
(Contractor) and hereby certifies to PG&E as follows:

1. Contractor has an effective Injury and Illness Prevention Program which meets the requirements of all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code, and any Subcontractor hired by Contractor to perform any portion of the Work under this Contract has an effective Injury and Illness Prevention Program; and
2. The undersigned is the person with the authority and responsibility for implementing and administering Contractor's Injury and Illness Prevention Program.

IN WITNESS WHEREOF, the undersigned has executed this Compliance Certificate.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## EXHIBIT 4

### PG&E DRUG AND ALCOHOL ABUSE AND TESTING POLICIES

#### I. PG&E POLICY

- 1.0 Preface: PG&E is committed to maintain and promote job safety and health for all workers at its facilities. In addition, PG&E is determined to protect its employees, customers, and the general public while they are on PG&E property from any harm caused by illegal drug and alcohol use by non-PG&E personnel. To accomplish these objectives, PG&E has established the following drug and alcohol policy for access to PG&E facilities by its Contractor and Subcontractor personnel.
- 2.0 Coverage: This policy applies to the personnel of all PG&E Contractors and Subcontractors performing any work or services at PG&E offices and/or any other PG&E facilities.
- 3.0 Policy: PG&E may deny access to, or remove from, its facilities the personnel of any Contractor or Subcontractor, who PG&E has reasonable grounds to believe has:
- 3.1 Engaged in alcohol abuse or illegal drug activity which in any way impairs PG&E's ability to maintain safe work facilities, to protect the health and well-being of PG&E employees, customers, and the general public, and to promote the public's confidence in PG&E's service and operations; or
- 3.2 Been found guilty, pled guilty, or pled nolo contendere to a charge of sale or distribution of any illegal drug or controlled substance as defined under Federal or California law within the past five years, unless the criminal record was later expunged or sealed by a court order.
- 4.0 PROHIBITED ACTIVITIES: The following activities are prohibited at all facilities owned or leased by PG&E:
- 4.1 Possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances as defined under Federal or California law;
- 4.2 Possessing, furnishing, selling, offering, or using alcoholic beverage, or being under the influence of alcohol.
- 5.0 ACTIONS: Where reasonable cause exists that paragraph 4 of this policy has been violated, the Contractor or Subcontractor must inform the PG&E representative responsible for the Contract. The Contractor or Subcontractor is also expected to take any or all of the following actions to the fullest extent they are permitted under governing collective bargaining agreements and/or its applicable security and human resources policies.
- 5.1 Search the individual, his or her vehicle, locker, storage area, and personal effects;
- 5.2 Require the individual to undergo a medical examination to determine their fitness for duty. Such examination shall include obtaining a urine and/or blood specimen for drug or alcohol analysis unless the examining physician deems such tests to be inappropriate;
- 5.3 Take any other appropriate action to determine if there has been a violation of paragraph 4. Refusal to comply with a request made under this paragraph shall be grounds for denying access to, or immediate removal from, any PG&E facility.
- 6.0 PERMISSION TO RE-ENTER: Any individual who has been denied access to, or removed from, PG&E facilities or violating this policy may obtain permission to enter or reenter provided the individual establishes, to the satisfaction of his or her employer and PG&E, that the previous activity which formed the basis for denying access or removal has been corrected and his or her future conduct will conform with this policy. PG&E retains the right of final approval for the entry or reentry of any individual previously denied access to or removed from PG&E facilities.

#### II. U.S. DEPARTMENT OF TRANSPORTATION REGULATIONS FOR DRUG AND ALCOHOL TESTING OF COMMERCIAL MOTOR VEHICLE DRIVERS AND OF NATURAL GAS PIPELINE WORKERS

- 1.0 Contractor agrees that, to the extent it may be applicable to this Contract, Contractor shall comply with the U.S. Department of Transportation's (DOT) regulations for (i) commercial motor vehicle drivers, 49 CFR 382, Controlled Substances and Alcohol Use and Testing and (ii) work on gas, hazardous liquid and carbon dioxide pipelines, and liquefied natural gas pipelines, 49 CFR Parts 192, 193 or 195, Control of Drug Use in Natural Gas, Liquefied Natural Gas and Hazardous Pipeline Operations. Contractor shall establish and maintain a drug and alcohol testing program for its employees consistent with 49 CFR Part 40, Procedures for Transportation Workplace Drug Testing Programs and 49 CFR 199, Drug and Alcohol Testing, as applicable. Contractor shall ensure that any Subcontractor hired by Contractor to perform any portion of the Work under this Contract that is regulated by 49 CFR 192, 193, 195 or 382 shall also have a drug and alcohol testing program that complies with applicable DOT requirements.
- 2.0 PG&E's duly authorized representatives, the CPUC, DOT and appropriate agencies shall have, during the term of the Contract and for two years thereafter, access at all reasonable times to Contractor's drug and alcohol testing program records for the purpose of monitoring compliance with DOT regulations. Contractor shall ensure that any Subcontractor hired by Contractor to perform any portion of the Work regulated by 49 CFR Part 192, 193, 195 or 382 under this Contract shall also provide access to its drug and alcohol testing program records to PG&E's authorized representatives, the CPUC, DOT and appropriate agencies for the purpose of monitoring compliance with DOT regulations. Failure to comply with this requirement may, at PG&E's option, result in cancellation or termination of existing contracts and the loss of opportunity to bid on future contracts.



## EXHIBIT 5

### PG&E CONTRACTOR DOCUMENT RETENTION AND PRODUCTION REQUIREMENTS

1. Contractor agrees to retain all documents and data, whether paper or electronic, created, collected or received for PG&E in the course of performing the Work or furnishing the materials under the Contract, including without limitation, documents, data, plans, drawings, diagrams, investigative notes, field notes, tests, photographs, records, calculations, summaries, and reports; provided that Contractor is not required to retain (i) draft versions of final written documents such as reports, presentations, or other written deliverables and (ii) documents that are inconsequential or ancillary to performance and documentation of the project or its deliverables as follows:
  - a. the documents and data specified in Exhibit 5A to this Contract and/or in individual work authorizations (CWA) under this Contract; or
  - b. all documents and data, whether paper or electronic, created, collected or received for PG&E in the course of performing the Work or furnishing the materials under the Contract.

If neither Section 1(a) or Section 1(b) is checked, Section 1(b) shall apply. If Section 1(a) is checked, but documents and data are not specified in Exhibit 5A, or in a subsequently issued CWA, Section 1(b) shall apply. Collectively, the information shall hereinafter be referred to as "PG&E Contractor Documents."

2. Contractor shall store PG&E Contractor Documents in a secure and organized manner. All PG&E Contractor Documents shall be in legible form, whether paper or electronic. In managing and administering PG&E Contractor Documents, Contractor will comply with the requirements of "The Generally Accepted Recordkeeping Principles<sup>®</sup>" (see [www.arma.org](http://www.arma.org)), or with modified requirements approved in writing by PG&E.
3. Upon completion of the Work or furnishing of the materials under the Contract, or upon completion of the Work or furnishing of the materials under each CWA under the Contract ("Work Completion Date"), PG&E will specify which of PG&E Contractor Documents must be transmitted by Contractor to PG&E ("PG&E Records"), provided however, unless otherwise agreed by PG&E:
  - a. Contractor shall transmit to PG&E, or provide PG&E access to, PG&E Records on request within forty eight (48) hours or sooner if needed (without limitation) for regulatory, CPUC, safety, audit and/or litigation requirements;
  - b. PG&E may specify that PG&E Records be delivered to PG&E on a regular basis prior to the Work Completion Date;
  - c. With respect to PG&E Contractor Documents not transmitted to PG&E as PG&E Records, Contractor shall retain all such documents for thirty-six (36) after the Work Completion Date ("Post-Termination Retention Period"). During the Post-Termination Retention Period, PG&E Contractor Documents shall be retained by Contractor at no additional cost to PG&E until disposed of in accordance with Section 6 below. To the extent PG&E requests Contractor to retain PG&E Contractor Documents after the Post-Termination Retention Period, the parties will mutually agree on the terms and conditions of such additional retention;
  - d. If PG&E Records are kept in electronic form, the following formats are acceptable for transmission to PG&E: (i) PDF, CAD or TIFF for drawings and diagrams and (ii) PDF for all other documents. If PG&E Records transmitted to PG&E consist of data in a proprietary format, Contractor shall make available to PG&E the proprietary tools or software necessary to access the data including after the transfer of the data to PG&E. This Section 3.d. shall not abrogate Contractor's obligation to produce PG&E Records in an alternative format (e.g., a native format) if set forth elsewhere in the Contract, in which case Contractor shall produce PG&E Records in each of the formats requested.
4. PG&E Contractor Documents shall be treated as confidential and shall not be disclosed to others unless Contractor is required to produce such documents pursuant to legal or regulatory requirements, in which case Contractor shall give PG&E maximum practicable advance notice prior to any production.
5. Contractor shall maintain a system for back-up of electronic PG&E Contractor Documents (e.g., files or databases) so they will be preserved for retrieval in the event that the originals are lost or destroyed.
6. If PG&E directs Contractor to dispose of PG&E Contractor Documents, Contractor shall do so in a confidential and secure manner, whether the format is electronic or paper. Proof of destruction of PG&E Contractor Documents shall be submitted to PG&E upon request.
7. If PG&E provides paper documents to Contractor in order to convert them to digital electronic format, Contractor shall return both the paper documents and the documents converted to digital electronic format to PG&E.
8. Contractor is responsible for ensuring that its Subcontractors regardless of tier comply with the obligations of Contractor where set forth in this Exhibit 5.
9. The terms and conditions of this Exhibit 5, including Exhibit 5A if attached, shall survive the termination of this Contract.

**EXHIBIT 5A**

**DOCUMENT AND DATA LIST**

If Section 1(a) of Exhibit 5 is checked, Contractor agrees that in connection with this Contract or CWA, as applicable, the following PG&E Contractor Documents will be created, received and/or maintained by Contractor:

## EXHIBIT 6

### AUDIT RIGHTS

#### 1. ACCURACY OF RECORDS.

1.1 Contractor shall keep accurate records and books of accounts showing the items and costs billed under this Contract, as well as cost data supporting the Contract proposal and/or other representations, including detailed supporting cost data for assumptions and calculation of indirect cost rates specified in the Contract. Contractor shall also maintain nonfinancial documentation and records related to Work performed hereunder but not delivered to PG&E.

1.2 Contractor's books and records must provide sufficient detail to verify the charges shall include, without limitation, the following:

- Payroll records (hours, employee name, employee classification, multiplier breakdown, etc.) that account for total time worked under the Contract;
- Canceled payroll checks or signed receipts for cash payroll;
- Invoices (including all back-up details) for purchases, receiving and issuing documents, and all inventory records for Contractor's stock or capital items;
- Paid invoices and canceled checks for purchased materials, Subcontractor, and third-party charges;
- Records relating to air freight and ground transportation, including but not limited to handling, hauling, and disposing of materials/equipment; and
- Accurate, auditable records of gifts and entertainment to individual PG&E personnel.

2. AVAILABILITY OF RECORDS. Contractor shall preserve and make available its records and books of accounts, both manual and those which are in machine readable form (collectively, "Records"), for a period of three years from the date of final payment under this Contract. If this Contract is terminated, Contractor's Records shall be preserved and made available for a period of three years from the date of termination or of any resulting final settlement, whichever is later. Records which relate to litigation or the settlement of claims arising out of the performance of this Contract, or costs and expenses of this Contract to which exception has been taken by PG&E, shall be retained until such appeals, litigations, claims, or exceptions have been concluded.

3. AUDIT. Upon reasonable notice, PG&E or its representatives shall have the right to audit, without restrictions and at no additional cost to PG&E, at any time during normal business hours, the items and costs described in this Section, including without limitation, all fees and direct and indirect costs incurred by Contractor and billed to PG&E, to verify the rates and costs billed to PG&E hereunder are as represented by Contractor. PG&E may use recognized statistical sampling methods to determine an estimate of the total amount, if any, of PG&E overpayments or underpayments to Contractor.

4. OVERPAYMENTS. Contractor shall refund to PG&E any payments to Contractor which are not in accordance with Contract terms or are not supported by Contractor Records or other valid evidence.

5. ERRORS/IRREGULARITIES. If errors, irregularities, inaccuracies, mistakes or the like ("Errors") are discovered by audit or other means and PG&E relied upon such Errors in accepting the rates, the affected rates shall be adjusted accordingly, with such adjustment retroactive to the effective date of the Contract and any overpayments refunded to PG&E.

6. MISREPRESENTATION OF COST OR PRICING DATA. If any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract, was increased by any significant amount because Contractor or a Subcontractor misrepresented cost or pricing data in negotiations, the price or cost shall be reduced accordingly. This provision also applies to any future change order or modification to this Contract which involves the submission of cost or pricing data. The knowing misrepresentation of cost or pricing data by Contractor shall be considered a material breach of this Contract.

7. TRANSACTION COSTS. If an audit determines that Contractor overcharged PG&E or if Contractor knowingly submits overcharges or misrepresents cost or pricing data in any amount, Contractor agrees to reimburse PG&E both the amount of the overcharges plus PG&E's associated transaction costs, including but not limited to costs associated with the discovery and determination of the overcharge amount, the discovery of misrepresented cost or pricing data, and the quantification of any resulting overcharges.

8. INTEREST ON OVERPAYMENTS. If PG&E makes an overpayment to Contractor as a result of Contractor over billings, Contractor shall be liable to PG&E for interest on the amount of such overpayment to be computed (1) for the period beginning on the date the overpayment was made to Contractor and ending on the date Contractor repays the amount of such overpayment to PG&E, and (2) at a rate equal to the prime rate charged by the Bank of America, NT&SA, San Francisco, California.
9. SUBCONTRACTS. Contractor shall include the requirements of this Exhibit in each Subcontract.

## Exhibit 7

### NERC REQUIREMENTS

Pursuant to a directive from the North American Electric Reliability Corporation (NERC), all employees and contractors with unescorted access to facilities, systems and functions that PG&E deems critical to the support of the Bulk Electric System ("Critical Facilities and/or Critical Systems") shall undergo employment background screening and training prior to being granted access to these PG&E facilities and/or systems. Contractor hereby agrees to perform background checks ("Personnel Risk Assessments" or "PRA's") on all Contractor and Subcontractor personnel ("Individuals") with unescorted access. PG&E has included in the category of those with unescorted access all Individuals working within PG&E Critical Facilities and/or Critical Systems. Contractor shall perform the following background check and comply with the following provisions for any Work subject to the NERC requirements for unescorted access. The background check can have no findings for any of the criteria (i.e., an acceptable background check):

Contractor shall perform a background screening for each Individual that includes each of the following criteria: (i) Social Security Number verification; (ii) City, County, State and Federal Criminal Check for felonies and misdemeanors over the past seven years (in up to three counties where the Individual has lived in the past seven years); (iii) "Global Watch" (check of 19 Federal and International Terrorist Watch lists); (iv) validation of current residence and confirmation of continuous residence at this site for a minimum of the most recent 6 months (confirmed by period of residence, employment, or education at a specific site) and validation of other locations where, during the seven years immediately prior to the date of the criminal check specified in (ii) above, the Individual has resided for six consecutive months or more.

1. After performing an acceptable background check for each Individual with unescorted access, the Contractor shall provide PG&E's Human Resources Department with a Personnel Risk Assessment Attestation Form in the form attached hereto as Exhibit 8A for each Individual on assignment to PG&E prior to the Individual being granted unescorted access. PG&E may request that Contractor provide a copy of complete Personnel Risk Assessment ("PRA") results at the time the Personnel Risk Attestation Form is submitted.
2. Contractor shall require that each Individual with unescorted access complete an initial training and annual PG&E web-based training session on safety, information security, compliance with PG&E codes and procedures including but not limited to CORP-0804 Cyber and Physical Security Awareness training. Contractor shall direct that each Individual complete the PG&E training program by CD or by hard copy format, if Contractor informs PG&E that web based training is not feasible.
3. After Contractor certifies to PG&E completion of the requirements set forth in paragraphs 1-3 above, PG&E will issue each Individual a keycard to access the designated PG&E facility to which they are assigned and/or logical access to the designated Critical System to which they are assigned. PG&E will deny access to Critical Facilities and/or Critical Systems to any Individual for whom Contractor has not certified completion of the requirements set forth in paragraphs 1-3 above.
4. Every seven years, Contractor shall perform NERC background screening as described herein for each Individual on continuing assignment to work at PG&E Critical Facilities and/or Critical Systems.
5. Contractor shall retain documentation supporting the Personnel Risk Assessment Attestation Form for each Individual assigned to PG&E Critical Facilities and/or Critical Systems for a minimum of seven years.
6. PG&E will audit Contractor's background screening methodology and substantiate the accuracy of Personnel Risk Assessment Attestation Forms for each Individual. Contractor shall respond to any auditing requests and activities, including but not limited to data requests, within one business day. PG&E and/or WECC will set the frequency of auditing the Contractor's PRA process and supporting records.
7. In addition to its other indemnity obligations hereunder, Contractor shall indemnify and hold harmless PG&E for any penalties assessed against PG&E (including but not limited to penalties assessed against PG&E by the Western Electricity Coordinating Council (WECC), NERC or the Federal Energy Regulatory Commission (FERC) for a violation of any NERC reliability standard) caused by Contractor's failure to perform its obligations under this Contract.

**Exhibit 7A**  
**PG&E NERC CIP PROGRAM**  
**NON-EMPLOYEE ATTESTATION FORM**  
**COMPLETION OF PERSONNEL RISK ASSESSMENT (PRA) PROCESS**

Please initial next to each line item below to verify that the following Non-Employee has received satisfactory results for each of the required background checks.

Non-Employee Name: \_\_\_\_\_

Vendor Name: \_\_\_\_\_

Requisition and/or PO #: \_\_\_\_\_

Date NERC Background Check Completed: \_\_\_\_\_

**Background Investigation – Completed and Passed the Following (Includes International Components When Applicable) Initial next to each:**

\_\_\_\_\_ Criminal Felony / Misdemeanor Search – Past 7 years, all names, all counties off the social trace (incl. past 7 years residency check)

\_\_\_\_\_ Federal Criminal Search – Past 7 years, all names off the social trace

\_\_\_\_\_ Managed Adjudication Standard

\_\_\_\_\_ Prohibited Parties

\_\_\_\_\_ SSN Trace

\_\_\_\_\_ SSN Validation

\_\_\_\_\_ Statewide Criminal Search

By completing and signing this form, Vendor confirms that the background investigation has been executed and satisfactory results received according to PG&E NERC CIP Program specifications for the above stated Non-Employee. All supporting documents must be kept on file with Vendor for a minimum of 7 years following the end of the Vendor's last non-employee's assignment at PG&E. Random audits of supporting documents may be conducted by PG&E or its designee, consistent with its right under the PG&E/Vendor contract, to ensure compliance with the requirements designated in the certification and contract.

**I certify that I am authorized to sign on behalf of the aforementioned Vendor.**

Vendor Representative Signature: \_\_\_\_\_

Vendor Representative Name: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## EXHIBIT A

### ESCALATED COMPLAINTS / SAFETY INCIDENTS

The safety and well-being of employees (contractor/ PG&E), Customers and the general public are of paramount concern in the Program. Prompt and complete communication between PG&E's Contractor, and/or its subcontractors is a fundamental part of addressing this concern. This policy and requirements applies to Contractor and is applicable to any and all subcontractor(s) delivering such Program on its behalf.

#### **Contractor/ Subcontractor's Actions & Responsibilities**

The Contractor must adhere to all Contract Terms and Conditions related to Safety as identified in Section 2.6, Importance of Safety, and Exhibit 4, PG&E Drug and Alcohol Abuse and Testing Policies of these General Conditions, as well as adhere to the Safety and Performance Standard as defined in the PG&E *Safety & Performance Fundamentals Handbook* and subsequent updated. Contractor will be responsible to immediately notify PGE's program management verbally and in writing of any incident or alleged incident relating to any work or incident of any type that is violates these standards.

Contractor must comply with notification, reporting and corrective actions and timelines as outlined in Notification and Actions Process for any incident or alleged incident where the incident constitutes or may constitute:

- A complaint (verbal or otherwise) by a Customer, employee or member of the general public regarding the misconduct or an inappropriate act by any Contractor employee;
- A violation of [PG&E's Contractor, Consultant and Supplier Code of Conduct](#), as available and periodically updated on PGE's website (<http://www.pge.com/b2b/purchasing/>) and any amendments thereto;
- Improper conduct by a Contractor's employee including conduct which reflects or may reflect poorly on the reputation of Contractor and PG&E.
- A serious accident, including but not limited to an accident involving emergency services such as police and fire personnel;
- Actual, suspected or alleged criminal activity;
- A situation which places the safety of any employee, Customer or the general public at risk (with or without injuries); or
- A situation which has the potential to expose the Contractor or PG&E to liability due to the negligence or other legally actionable conduct of a Contractor's employee.

The above list is provided only as a guide and if there is any doubt as to the applicability of this section, Contractor shall include such incident to comply with this policy/procedure.

A contractor's violation of this provision may subject the contractor to penalties or other actions including, but not limited to the loss current contracted work or termination of the contract at PG&E's sole discretion.

For clarity, this Exhibit is in addition to other provisions of the Contract and Program policies (as may be amended from time to time) relating to the conduct of contractor employees.

#### **Contractor Actions & Responsibilities, as applicable:**

Upon receipt of any safety violation covered above from any source, Contractor will:

1. Immediately review the issue and
2. Notify PG&E verbally of the violation
3. Determine if the safety violation is a continuing or potential threat to any PG&E Customer, employee or anyone in the general public. Examples:

- a. If there is a threat, Contractor will immediately stop any work related to the actions involved or related to the safety violation.
  - b. If no such threat exists Contractor will quickly review the record, and begin preparing a root cause analysis.
  - c. If immediate corrective actions are apparent these methods will be implemented.
  - d. Contractor will then notify PG&E in writing of the details of the complaint
4. Conduct an investigation in all cases.
    - a. In all cases, Contractor will try to discover the root cause of the incident.
    - b. Review its safety database for previous related issue or violations
    - c. Review and suggest corrective actions to be implemented with the PG&E Program Manager, who may engage PG&E's Safety department for assistance.
    - d. Determine how long the employee has worked in the program and any other pertinent information.
5. Present a written report to PG&E
    - a. Describe the incident
    - b. Describe the results of Contractor' investigation
    - c. Present recommendations to PG&E for consideration
6. Carry out whatever action is required as a result of these considerations.



## EXHIBIT B

### CONFIDENTIALITY AND DATA SECURITY

1. In addition to the requirements set out in Section 5.3, Confidentiality, of these General Conditions, Contractor shall comply with the following additional terms of this Exhibit B (Confidentiality and Data Security) regarding the handling of Confidential Information and PG&E Data from PG&E or its Customers.
2. **NON-DISCLOSURE AGREEMENTS:** Contractor shall instruct all of its employees who will perform Work or services under this Contract to comply with the requirements of this Exhibit B, including the substantive requirements incorporated in Exhibit C. Contractor shall have all of its Subcontractors, and Subcontractor employees who will perform Work or services under this Contract sign a non-disclosure agreement in the form attached hereto as Exhibit C (Non-disclosure and Use of Information Agreement ["NDA"]). Prior to starting said Work or services, subcontractors shall promptly furnish the original signed non-disclosure agreements to PG&E.
3. **SECURITY MEASURES:** Contractor shall take "Security Measures" with the handling of Confidential Information to ensure that the Confidential Information will not be compromised and shall be kept secure. Security Measures shall mean industry standards and techniques, physical and logical, including but not limited to:
  - a. written policies regarding information security, disaster recovery, third-party assurance auditing, penetration testing,
  - b. password protected workstations at Contractor's premises, any premises where Work or services are being performed and any premises of any person who has access to such Confidential Information,
  - c. encryption of Confidential Information, and
  - d. measures to safeguard against the unauthorized access, destruction, use, alteration or disclosure of any such Confidential Information including, but not limited to, restriction of physical access to such data and information, implementation of logical access controls, sanitization or destruction of media, including hard drives, and establishment of an information security program that at all times is in compliance with the industry requirements of ISO 27001.
4. **COMPLIANCE AND MONITORING:** Contractor shall comply with security policies relating to the handling of Confidential Information.
  - a. Prior to PG&E's first transfer of Confidential Information to Contractor, Contractor shall provide PG&E with documentation satisfactory to PG&E that it has undertaken Security Measures.
  - b. Contractor and PG&E agree to meet periodically, if requested by PG&E, to evaluate Contractor's Security Measures and to discuss, in good faith, means by which the Parties can enhance such protection, if necessary.
  - c. Contractor shall update its Security Measures, including procedures, practices, policies and controls so as to keep current with industry standards, including but not limited to NIST and NERC/CIP, as applicable.
  - d. PG&E reserves the right to perform onsite security assessments to verify the implementation and ongoing operation and maintenance of security controls. At least annually, Contractor shall assist PG&E in obtaining a copy of any report that documents Contractor's Security Measures.

- e. In the event, PG&E determines Contractor has not complied with Security Measures, PG&E shall provide written notice to Contractor describing the deficiencies. Contractor shall then have sixty (60) calendar days to cure. If Contractor has not cured the deficiencies within sixty (60) calendar days, PG&E may cancel this Contract for cause in accordance with Section 8.2 of these General Conditions.
5. PG&E DATA: PG&E Data shall mean:
    - a. all data or information provided by or on behalf of PG&E, including, but not limited to, personally identifiable information relating to, of, or concerning, or provided by or on behalf of any Customers,
    - b. all data or information input, transferred, uploaded, migrated, or otherwise sent by or on behalf of PG&E to Contractor as PG&E may approve of in advance and in writing (in each instance),
    - c. account numbers, forecasts, and other similar information disclosed to or otherwise made available to Contractor by or on behalf of PG&E and Customers, and
    - d. all data provided by PG&E's licensors, including any and all survey responses, feedback, and reports, as well as information entered by PG&E, Contractor or Subcontractor, and Participating Customers through the Program.
  6. SECURITY OF PG&E DATA: Contractor agrees that Contractor's collection, management and use of PG&E Data during the Term shall comply with these security requirements and all applicable laws, regulations, directives, and ordinances.
    - a. Vendor Security Review: Before receiving any PG&E Data, Contractor shall undergo PG&E's Vendor Security Review process. Contractor may receive PG&E Data if Contractor receives a risk rating of 3, 2 or 1 from PG&E at the conclusion of the PG&E Vendor Security Review process. If Contractor receives a risk rating of 4 or 5 from PG&E, Contractor may not receive PG&E Data until such time Contractor receives a risk rating of 3, 2 or 1.
  7. USE OF PG&E DATA:
    - a. License: PG&E may provide PG&E Data to Contractor to perform its obligations hereunder. Subject to the terms of the Contract, PG&E grants Contractor a personal, non-exclusive, non-assignable, non-transferable limited license to use the PG&E Data solely for the limited purpose of performing the Work or services during the Term, but not otherwise.
    - b. Limited Use of PG&E Data: Contractor agrees that PG&E Data will not be (a) used by Contractor for any purpose other than that of performing Contractor's obligations under this Contract, (b) disclosed, sold, assigned, leased or otherwise disposed of or made available to third parties by Contractor, (c) commercially exploited by or on behalf of Contractor, nor (d) provided or made available to any other party without written authorization, subject to these General Conditions and Exhibit B, Confidentiality and Data Security, and Exhibit C, Non-Disclosure and Use of Information Agreement.
    - c. Application Development: Contractor agrees that it will not engage in any application development without or until it has demonstrated compliance with the provisions of these General Conditions and Exhibit B and Exhibit C.
  8. SECURITY BREACH: Contractor shall immediately notify PG&E in writing of any unauthorized access or disclosure of Confidential Information and/or PG&E Data.
    - a. Contractor shall take reasonable measures within its control to immediately stop the unauthorized access or disclosure of Confidential Information and/or PG&E Data to prevent recurrence and to return to PG&E any copies.
    - b. Contractor shall provide PG&E (i) a brief summary of the issue, facts and status of Contractor's investigation; (ii) the potential number of individuals affected by the security breach; (iii) the Confidential Information and/or PG&E Data that may be implicated by the security breach; and (iv) any other information pertinent to PG&E's understanding of the

security breach and the exposure or potential exposure of Confidential Information and/or PG&E Data.

- c. Contractor shall investigate such breach or potential breach, and shall inform PG&E, in writing, of the results of such investigation, and assist PG&E (at Contractor's sole cost and expense) in maintaining the confidentiality of such Confidential Information and/or PG&E Data. Contractor agrees to provide, at Contractor's sole cost and expense, appropriate data security monitoring services for all potentially affected persons for one (1) year following the breach or potential breach, subject to PG&E's prior approval.
  - d. If requested in advance and in writing by PG&E, Contractor will notify the potentially affected persons regarding such breach or potential breach within a reasonable time period determined by PG&E and in a form as specifically approved in writing by PG&E. In addition, in no event shall Contractor issue or permit to be issues any public statements regarding the security breach involving Confidential Information and/or PG&E Data unless PG&E requests Contractor to do so in writing.
9. **RIGHT TO SEEK INJUNCTION:** Contractor agrees that any breach of this Exhibit B (Confidentiality and Data Security) would constitute irreparable harm and significant injury to PG&E. Accordingly, and in addition to PG&E's right to seek damages and any other available remedies at law or in equity in accordance with this Contract, Contractor agrees that PG&E will have the right to seek, from any competent civil court, immediate temporary or preliminary injunctive relief enjoining any breach or threatened breach of this Contract, involving the alleged unauthorized access, disclosure or use of any Confidential Information and/or PG&E Data. Contractor hereby waives any and all objections to the right of such court to grant such relief, including, but not limited to, objections of improper jurisdiction or forum non convenience. Contractor otherwise reserves the right to contest the legal or factual basis for such relief.
10. **CPUC and IOU DISCLOSURE:** Notwithstanding anything to the contrary contained herein, but without limiting the general applicability of the foregoing, Contractor understands, agrees and acknowledges as follows.
  - a. PG&E hereby reserves the right in its sole and absolute discretion to disclose any and all terms of this Contract and all exhibits, attachments, and any other documents related thereto to the California Public Utilities Commission (CPUC), and that the CPUC may reproduce, copy, in whole or in part or otherwise disclose the Contract to the public.
  - b. PG&E may be required, or may deem it to be in the best interest of the Program, to disclose to other IOUs certain Program information (excluding any pricing information).
11. **SUBPOENAS:** In the event that a court or other governmental authority of competent jurisdiction, including the CPUC, issues an order, subpoena or other lawful process requiring the disclosure by Contractor of the Confidential Information and/or PG&E Data provided by PG&E, Contractor shall notify PG&E immediately upon receipt thereof to facilitate PG&E's efforts to prevent such disclosure, or otherwise preserve the proprietary or confidential nature of the Confidential Information and/or PG&E Data. If PG&E is unsuccessful at preventing the disclosure or otherwise preserving the proprietary or confidential nature of the Confidential Information and/or PG&E Data, or has notified Contractor in writing that it will take no action to prevent disclosure or otherwise preserve the proprietary or confidential nature of such Confidential Information and/or PG&E Data, then Contractor shall not be in violation of this Agreement if it complies with an order of such court or governmental authority to disclose such Confidential Information and/or PG&E Data.

**EXHIBIT C**

**NON-DISCLOSURE AND USE OF INFORMATION AGREEMENT (“NDA”)**

THIS AGREEMENT is by and between \_\_\_\_\_ (“Company”), \_\_\_\_\_, (“Undersigned”) authorized employee of Company (together, Company and Undersigned are referred to as the “Recipient”), and PACIFIC GAS AND ELECTRIC COMPANY (“PG&E”) on the date set forth below. Undersigned and Company agree as follows:

1. The Recipient acknowledges that in the course of performing services or work for PG&E, the Recipient will be given access to certain Confidential Information, which includes (a) the Customer’s account information and information relating to their facilities, equipment, processes, products, specifications, designs, records, data, software programs, Customer identities, marketing plans or manufacturing processes or products, (b) any technical, commercial, financial, or Customer information of PG&E obtained by Contractor in connection with this Contract, either during the Term or prior to the Term but in contemplation that Contractor might be providing the Work or services, including, but not limited to a Customer’s energy usage and billing data, data, matters and practices concerning technology, ratemaking, personnel, business, marketing or manufacturing processes or products, which may be information owned by PG&E or by a third party and which may be in the custody of PG&E or third party and which constitutes valuable confidential and proprietary information and or trade secrets belonging to PG&E, and/or third parties, (c) any such confidential information of any third party disclosing such confidential information to PG&E or Contractor in the course of such third party’s employment, engagement, business, or other relationship with PG&E or its parent, subsidiary, or affiliated companies and (d) PG&E Data as defined in Exhibit B, Confidentiality and Data Security (collectively, “Confidential Information”).
2. In consideration of being made privy to such Confidential Information, and of the contracting for the Recipient’s professional services by PG&E, the Recipient hereby shall hold the same in strict confidence, and not disclose it, or otherwise make it available, to any person or third party (including but not limited to any affiliate of PG&E that produces energy or energy-related products or services) without the prior written consent of PG&E. The Recipient agrees that all such Confidential Information:
  - a. Shall be used only for the purpose of providing Work or services for PG&E; and
  - b. Shall not be reproduced, copied, in whole or in part, in any form, except as specifically authorized and in conformance with PG&E’s instructions when necessary for the purposes set forth in (a) above; and
  - c. Shall, together with any copies, reproductions or other records thereof, in any form, and all information and materials developed by Undersigned there from, be returned to PG&E when no longer needed for the performance of Undersigned’s Work or services for PG&E.
3. The Recipient hereby agrees that any third parties owning any Confidential Information are express third party beneficiaries of this Agreement.
4. The Recipient hereby acknowledges and agrees that because (a) an award of money damages is inadequate for any breach of this Agreement by the Recipient or any of its representatives and (b) any breach causes PG&E irreparable harm, that for any violation or threatened violation of any provision of this Agreement, in addition to any remedy PG&E may have at law, PG&E is entitled to equitable relief, including injunctive relief and specific performance, without proof of actual damages.
5. This Agreement shall be governed by and interpreted in accordance with the laws of The State of California, without regard to its conflict of laws principles.

UNDERSIGNED

CONTRACTOR

By: \_\_\_\_\_

Company Name: \_\_\_\_\_

Name: \_\_\_\_\_

Authorized Agent: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT D

### CUSTOMER SATISFACTION

#### **Contractors and/ or its Subcontractors (hereinafter "Contractor") Actions & Responsibilities:**

Contractor shall perform their obligations under the Contract in order to ensure that all PG&E Customers have a positive experience, including but not limited to those participate in the Program.

1. Contractor shall locate, recruit, train and oversee the personnel and resources required and provide them with materials, training, processes and procedures to assure consistent, high quality and well documented implementation of the Program.
2. Contractor agrees to maintain sufficient staffing levels to cause all Work to be performed within the time frames specified in the Contract and applicable Statement of Work. Contractor shall assign experienced personnel qualified at the appropriate level of expertise required to perform the Work so assigned. Contractor guarantees the performance of Performing Entities (Suppliers, Sub-Suppliers, Contractors, Subcontractor, Consultants, etc.) performing any part of Contractor's obligations hereunder, and any breach of this Contract by Contractor's personnel constitutes a breach by Contractor. All personnel shall be subject to the direction, supervision, and control of Contractor. Contractor agrees that Contractor is solely responsible for any acts or omissions of Performing Entities while performing Work.
3. Contractor shall respect the rights of the general public, and PG&E Customers, at all times. Contractor shall at all times to be courteous to all PG&E Customers affected by the Work performed under this Contract as well as all members of the general public. The Contractor shall ensure that the its conduct of the employees is of a professional manner, and shall not allow its employees to smoke, play radios, use profanity, use abusive language, or display gestures which could be interpreted by the PG&E Customer or the general public as offensive or obscene.
4. Conflicts between the general public and PG&E Customers and the Contractor will not be tolerated. If, in the opinion of the PG&E Program Manager, the Contractor or its employees is unsatisfactory or unfit, Contractor's Representative shall remove immediately said employee from performing any Work under this Contract. It is understood that this provision in no way requires the Contractor to terminate the employment of any employee replaced under the terms of this section. Nor, by the terms of this section, does PG&E expressly or impliedly endorse or approve the termination of employment with the Contractor of any employee replaced under the terms of this section.
5. Due to the ongoing relationship between PG&E and its Customer, Contractor shall perform all Work in a timely, conscientious and businesslike fashion with a minimum of delays and disputes. Contractor shall resolve any disputes with Customers in accordance with the provisions of Section 6.0 of the Specific Conditions. TIME IS OF THE ESSENCE UNDER THIS CONTRACT.
6. Cleaning Up: With respect to its operation, Contractor shall maintain all worksites and related structures, equipment, and facilities in a clean, orderly condition during progress of the Work and clean up debris to the reasonable satisfaction of PGE& and Customer. Any unused or leftover materials, garbage and debris shall be promptly removed from Customer's site by Contractor and disposed of at Contractor's expense.
7. Contractor shall abide by all local, state, and federal laws and regulations, including but not limited to Permit and EVA.
8. Contractor shall ensure that an adult (18 years or older), must be present at all times during which the Contractor is on the Customer's premises or in a Customer's Home where a minor is present. The absence of an adult at a Customer's Home shall constitute a Customer "CGI (Cannot Get In)". In such a case, Contractor shall not begin Work. Instead, Contractor shall leave Customer's Home immediately. If an adult is initially present at a Customer's premises but leaves after Contractor has begun Work, Contractor shall cease Work immediately and vacate the premises.

## EXHIBIT B

(MSA)

### ACCESS AGREEMENT

PG&E CWA NO. \_\_\_\_\_

This Access Agreement (Agreement) is between Implementer and \_\_\_\_\_ who is the lawful tenant or owner (Owner) of the location at \_\_\_\_\_ (Premises). The purpose of this Agreement is for the Owner to provide access and permission to go on the Premises to implement a project. This project involves (*monitoring equipment, installing equipment, field study, collection of data or energy usage data – describe where, what, and how the equipment will be installed; and what the equipment will perform* \_\_\_\_\_ (Project)). The Project should be complete by \_\_\_\_\_.(Term).

The parties agree as follows:

1. **Authority.** Owner certifies it has the authority to enter into this Agreement and grant Implementer access to the Premises. If Tenant, defined as Owner above, represents Tenant has the property owner's permission to enter into this Agreement.
2. **Notification of Change of Ownership or Occupancy.** Owner intends to maintain the ownership or tenancy of the premises during the Term of the Project. However, in the event it becomes necessary, during the Term Owner sells or rents the Premises to a party not a signatory to this Agreement, the Owner agrees to explain the nature of the Project to all prospective buyers or tenants to continue participation in the Project. Otherwise, this Agreement will be terminated.
3. **Access.** Owner agrees to provide access to the Premises to Implementer, its subcontractors, Pacific Gas and Electric Company (PG&E), and the California Public Utilities Commission to visit, inspect and carry out the work of this Project. Owner also agrees to direct its employees and contractors to cooperate with the implementation of this Project. Implementer will coordinate coming to the Premises during business hours and at times to minimize any disruptions or inconvenience. Upon completion of the Project, Implementer will leave the Premises in substantially the same condition prior to the Project.
4. **Equipment Ownership.** If equipment is installed, Owner shall have no ownership, interest or title in the equipment, unless otherwise purchased by the Owner.
5. **Confidentiality.** The parties agree not to use their names or PG&E, identifying characteristics or photographs for any advertising, sales promotion or publicity without prior the Party's written approval.
6. **Project Funding.** Implementer is receiving funds from PG&E for this Project, but Parties agree that PG&E is not liable for any loses or damages, including incidental, consequential, indirect, lost profits or special damages, arising from this Agreement.
7. **Costs.** Unless otherwise agreed, Implementer will bear the actual Project costs. .
8. **Termination.** Either Party can terminate this Agreement at any time and for any reason. Upon termination, Implementer shall be granted access to the Premises to remove any of its equipment or other property. The Project not being complete at termination will result in the Project incentives being forfeited. The Confidentiality, Release of Liability and Ownership of Information provisions shall survive the Termination of this Agreement.
9. **Ownership of Information.** Implementer may provide the Owner with information about its findings regarding this Project. PG&E shall have all ownership rights, including exclusive copyright ownership, in all data, reports, research results, summaries, information, or other written, recorded, photographic or

visual materials (Information) produced and collected regarding the Project. Owner shall not publish or otherwise distribute any information obtained during the Term without PG&E's prior written consent.

10. **Release of Liability.** PG&E is not a party to this Agreement. Owner and Implementer agree to waive all claims arising out of or related to this Agreement and the Project against PG&E, other than claims directly attributable to PG&E's gross negligence or willful misconduct. In no event shall PG&E be liable for any incidental, consequential, indirect, or special damages arising from this Agreement or the Project.
11. **Negligence.** In the implementation of the Project, Owner and Implementer assumes the responsibility for the negligence of their respective employees, contractors, subcontractors and agents and for the claims of third parties resulting from such negligence.
12. **No Obligation:** Owner is not obligated to purchase any full fee service or other service not funded by the program Project. Funding is done by California utility ratepayers under the auspices of the CPUC. *Los consumidores en California no están obligados a comprar servicios completos o adicionales que no esten cubiertos bajo este programa. Este programa está financiado por los usuarios de servicios públicos en California bajo la jurisdicción de la Comisión de Servicios Públicos de California (CPUC).*
13. **Availability of Funds:** The Project program funds are available on a first-come, first served basis until depleted.
14. **General.** This Agreement is binding upon the successors and transferees of the Parties. This Agreement shall be construed in accordance with the laws of the State of California.
15. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties as to the subject matter of the Agreement.

**AGREED AND ACCEPTED:**

IMPLEMENTER

OWNER

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT GC – 1 CONTRACTOR SAFETY PROGRAM

Contractor represents and warrants that it will perform all applicable Work, and cause all Subcontractors to perform all applicable Work, in compliance with PG&E's Contractor Safety Program Standard Contract Requirements, as may be modified from time to time.

The Contractor Safety Program Standard Contract Requirements can be located and downloaded at: [www.pge.com/contractorsafety](http://www.pge.com/contractorsafety) and are hereby incorporated by reference into this Contract. Contractor's failure to comply with the Contractor Safety Program Standard Contract Requirements shall be immediate grounds for termination for cause under this Contract.



EXHIBIT GC – 2  
SUPPLIER CODE OF CONDUCT

SUPPLIER CODE OF CONDUCT: CONTRACTOR, ITS SUBCONTRACTORS AND THEIR SUPPLIERS AT ALL TIERS, SHALL COMPLY WITH PG&E'S SUPPLIER CODE OF CONDUCT IN THE AWARD AND PERFORMANCE OF ALL CONTRACTS AND SUBCONTRACTS.

The Supplier Code of Conduct requires that Contractor and each of its Subcontractors demonstrate a strong commitment to compliance, ethics, sustainability and supplier diversity as a foundation to successful business. Contractor must complete its Work for PG&E in full compliance with the Supplier Code of Conduct, as it may be modified from time to time.

Contractor shall access, read and comply with PG&E's Supplier Code of Conduct and shall make it available to its Subcontractors and suppliers. The Supplier Code of Conduct is available at PG&E's website, [www.PGE.com](http://www.PGE.com), at the following link:

[http://www.pge.com/includes/docs/pdfs/b2b/purchasing/contractor\\_consultant\\_and\\_supplier\\_code.pdf](http://www.pge.com/includes/docs/pdfs/b2b/purchasing/contractor_consultant_and_supplier_code.pdf)

Newton Anderson McCormick

Appendix C, cont'd.

PG&E Funding Terms

PG&E Agreement with City of San Francisco, MSA No. 4400010199

CWA and Contract Long Form