

**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
Zones, LLC**

**Term Contract # 99400
Tier 1 Contractor of the Technology Marketplace 2.0
PeopleSoft Supplier Contract ID: 1000012619**

This Agreement is made this first day of January, 2019, in the City and County of San Francisco ("City"), State of California, by and between Zones, LLC 1102 15th St. NW, Suite 102, Auburn, WA 98001 ("Contractor") and City.

Recitals

WHEREAS, the Office of Contract Administration ("Department") wishes to procure Informational Technology products and services on an as-needed basis through the Technology Marketplace; and,

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through Request for Proposals #99400 "Tiers 1 and 2 of the Technology Marketplace 2.0" a Request for Proposal ("RFP") issued on June 20, 2018, in which City selected Contractor as a qualified proposer pursuant to the RFP; and

WHEREAS, the Local Business Entity ("LBE") subcontracting participation requirement for this Agreement is 15 % for services, with the exception that the requirement will be 10% for training services;

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

WHEREAS, the City's Civil Service Commission approved Contract number 44114-17/18 on July 10, 2018;

WHEREAS, the City's Board of Supervisors approved resolution number
0019-19 on January 15, 2019;

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 that 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 Office of Contract Administration."

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

1.4 "Contractor" means Zones, LLC 1102 15th St. NW, Suite 102, Auburn, WA 98001.

1.5 "Cloud Services" means any provision of products or services rendered via a hosted cloud delivery structure. There are three cloud computing service models: Software as a Service (the use of applications running on a cloud infrastructure environment), Platform as a Service (the deployment of applications created using programming languages, libraries, services, and tools supported by a cloud provider), and Infrastructure as a Service (the provision of processing, storage, networking and other fundamental computing resources). There are four cloud computing deployment models: private (for use by a single organization), public (for use by general public), community (for use by a specific community of organizations with a shared purpose), and hybrid (A composition of two or more cloud infrastructures (public, private, community)).

1.6 "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 "Administrative Procedures and Requirements" attached as Appendix A and any TMTPO executed under the Agreement..

1.7 "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.

1.8 "Hardware" means tangible products such as physical devices and components that make up a computing system or any technology based solution which may include but is not limited to internal components such as CPUs, power supplies, hard drives, fans, heat sinks and video cards or external components such as webcams, microphones, routers, network switches, data cables, monitors, battery back-ups, printers, speakers and card readers.

1.9 "Hardware Maintenance Services" means the general services category refers to hardware maintenance of any technology related product, device, component or part. Examples may include but are not limited to on-site repair of stand-alone or networked PCs, printer maintenance and repair of network hardware.

1.10 "Installation and Configuration Services" means installation and configuration services incidental to the purchase of hardware and software products.

1.11 "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.

1.12 "Ordering Department" means a department of the City and County of San Francisco, or other public agency, which initiates a requisition for the order of products or services pursuant to the authorized procedures set forth in this Agreement.

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

1.14 "Product" means hardware, software or any combination of them, procured through this Agreement.

1.15 "Professional Services" means services requiring specialized computer and IT related knowledge, expertise, or training acquired either by a prolonged course of study or equivalent experience in the field. Examples may include but are not limited to software developers, programmers, engineers, analysts, project managers, system architects, and system integrators. This category will also cover more specialized professional services that require a specific area of expertise. Examples may include, but are not limited to, network security testing services, data migration services and facility security system configuration and testing services.

1.16 "Services" means the work performed by Contractor under this Agreement as specifically described in the "Administrative Procedures and Requirements" attached as Appendix A and any TMTPO executed under this Agreement, including procurement of Hardware Maintenance Services, Training Services, Professional Services, Cloud Services, labor, supervision, Products, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.17 "Software" means intangible products such as organized collections of computer data, code, firmware, patches, digital keys, upgrades or updates which may include but is not limited to operating system software, applications, programs, Software-as-a-Service (SaaS), licenses, and subscriptions.

1.18 "Software Maintenance" means maintenance that is either optional or required to ensure that the software remains operational and continues to satisfy user requirements. Software maintenance may include but is not limited to software updates, patches, upgrades, technical support, and after sale support related to purchased licenses, and including all improvements or actions needed to keep the licensed software operating as specified.

1.19 "Technology Marketplace" means a virtual marketplace comprised of the multiple award pool of contracts made available to City ordering departments and other governmental agencies and jurisdictions for the efficient and cost-effective procurement of IT products and services.

1.20 "Technology Marketplace Transaction" means an event resulting in a purchase of Products, Hardware Maintenance Services, Training Services, Professional Services or Cloud Services through the Technology Marketplace.

1.21 "Technology Marketplace Transaction Purchase Order" ("TMTPO") means the authorization document designated as such by the Purchaser for a procurement resulting from a Technology Marketplace Transaction, whether issued in a paper or electronic format, including blanket purchase orders for purchases involving multiple payments, and shall also include the scope of work for that particular purchase.

1.22 "Training Services" means training for technology products and services including but not limited to instruction, assistance and training services for end users and technical support.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the later of: (i) January 1, 2019; or (ii) the Effective Date and expire on December 31, 2021, unless earlier terminated as otherwise provided herein.

2.2 The City has two options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

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

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

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

3.3 Compensation.

3.3.1 **Payment.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month. Compensation shall be made for Services identified in the invoice that the Ordering Department's department head, 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 Twenty Million dollars (\$20,000,000). 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 Ordering Department accepts and 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 as specified in 3.3.6 ,” or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.5 **LBE Payment and Utilization Tracking System.** Contractor must submit all required payment information using the City's Financial System as required by CMD to enable the City to monitor Contractor's compliance with the LBE subcontracting commitments in this Agreement. Contractor shall pay its LBE subcontractors within three working days after receiving payment from the City, except as otherwise authorized by the LBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required CMD payment information. Failure to submit all required payment information to the City's Financial System with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required payment information is provided. Following City's payment of an invoice, Contractor has ten calendar days to acknowledge using the City's Financial System that all subcontractors have been paid. Self-Service Training for suppliers is located at this link:
<https://sfcitypartner.sfgov.org/Training/TrainingGuide> .

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 the City's Automated

Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit 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.

3.4 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.

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

3.6 Reserved. (Payment of Prevailing Wages)

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services provided for in Appendix A, "Administration Procedures and Requirements" and each TMTPO executed pursuant to this Agreement. 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 Services listed in Appendix A and any executed TMTPO, unless Appendix A is

modified as provided in Section 11.5, "Modification of this Agreement, or the TMTPO is modified in writing by City and Contractor.

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.

4.3.1 It is anticipated that Contractor will subcontract portions of the Services rendered under this Contract. Such subcontracting shall occur only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

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

performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to 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 Liquidated Damages. Contractor acknowledges that certain Technology Marketplace Transactions may require that Contractor meet specific dates for providing Deliverables under the Agreement. In such cases, Contractor agrees that its failure to adhere to the schedule specified in the TMTPO may subject City to actual damages that are impractical or extremely difficult to ascertain. Contractor understands and agrees that City may specify in the TMTPO, as a reasonable estimate of the loss City will incur because of Contractor's delay, a daily rate of liquidated damages. By accepting the TMTPO, Contractor agrees that this sum shall not be considered a penalty and is an agreed upon sum of monetary damages sustained by City because of Contractor's failure to furnish Deliverables to City within the time period fixed or such extensions of time permitted in writing by City.

4.8 Bonding Requirements. The Contractor may be required on a case by case basis to furnish a performance bond on the form in a form acceptable to the City, to guarantee the faithful performance of this contract. The bonds must be approved as to sufficiency and qualifications of the surety by the Controller and City Attorney.

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 The following insurance requirements are the minimum coverages required under this Agreement. At the individual purchase level, on a project by project basis, these requirements may be modified based on the products and/or services the City is procuring under its agreement from a specific contractor. Such modifications may include the type of insurance, the required minimum limits of insurance, as well as exclusions or inclusions related to coverage. Furthermore, the amount and type of insurance required for a particular purchase will be based on the types and amount of risk involved. Insurance policies that include coverage for both technology errors and omissions as well as cyber privacy are acceptable so long as they meet the limits the Risk Manager requires in the contract.

5.1.2 Ordering Departments shall contact the City's Risk Manager with any questions related to insurance requirements, and are encouraged to do this early in the contracting process. Any reductions below the amount of insurance coverage required, or any waivers of these coverages require the specific approval of the City's Risk Manager.

5.1.3 Required Minimum 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 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.
- (d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.
- (e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

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

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

(f) Contractor shall maintain in force during the full life of the agreement Cyber and Privacy Insurance with limits of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

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

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

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

5.1.5 All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

5.1.6 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.

5.1.7 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.

5.1.8 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.

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

5.1.10 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.

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

5.2 Indemnification. Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "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.	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment	10.13	Working with Minors
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	13.1	Nondisclosure of Private, Proprietary or Confidential Information

(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	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	13.1	Nondisclosure of Private, Proprietary or Confidential Information

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

Article 9 Rights In Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever

determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

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

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

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

10.4 Reserved.

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.

Contractor shall utilize LBE Subcontractors for at least 15% of the Services, except that for training services the requirement is 10%, and except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

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

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges 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>. 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: Shawn Peeters
Office of Contract Administration
1 Dr. Carlton B. Goodlett Place
City Hall, Room 430
San Francisco, CA 94102
email: shawn.peeters@sfgov.org

To Contractor: Kenneth Mollison, Advanced Technology Executive
Zones, LLC
1102 15th St. NW, Suite 102,
Auburn, WA 98001
(916)549-4474
Ken.mollison@zones.com

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

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

11.3 Reserved.

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

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

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of

the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

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

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

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

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

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

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing TMTPOs, the RFP, Contractor's proposal dated August 8, 2018, and Contractor's proposal or bid in response to the Technology Marketplace Transaction solicitation. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing TMTPOs shall control over the RFP and the Contractor's proposal.

Article 12 Department Specific Terms

12.1 **Reserved.**

Article 13 Data and Security

13.1 **Nondisclosure of Private, Proprietary or Confidential Information.**

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

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

13.2 **Reserved. (Payment Card Industry ("PCI") Requirements)**

13.3 **Reserved. (Business Associate Agreement)**

Article 14 Appendices

14.1 The following appendices of supplemental terms and conditions are hereby attached and incorporated into this Agreement as though fully set forth herein and together form the complete Agreement between the parties. Each Technology Marketplace Transaction will include specialized terms and conditions as required which may be in the forms attached in Appendix D, or in a form substantially similar to Appendix D.

- (a) Administrative Procedures and Requirements
- (b) RFP Documentation
- (c) Technology Marketplace Categories
- (d) Supplemental Terms and Conditions:
 - (i) P-530 Equipment Maintenance Template;
 - (ii) P-540 Software Maintenance Template;
 - (iii) P-542 Software Development Template;
 - (iv) P-545 Software Licensing Template;
 - (v) P-600 Professional Services Template; and
 - (vi) P-648 Software as a Service Template.

Article 15 MacBride And Signature

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.

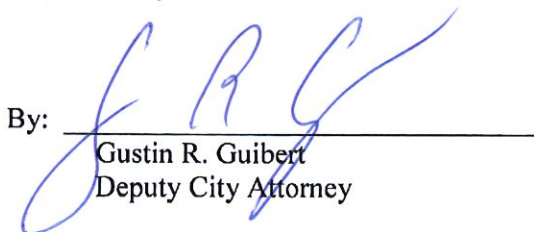
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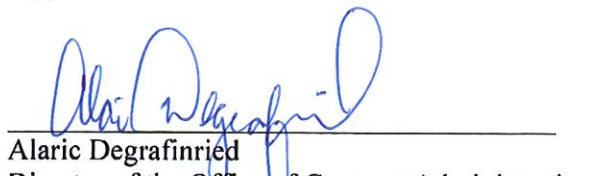

Shawn Peeters
Supervising Purchaser
Office of Contract Administration

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 
Gustin R. Guibert
Deputy City Attorney

Approved:


Alaric Degrafinried
Director of the Office of Contract Administration,
and Purchaser

CONTRACTOR

Zones, LLC


Signature of Authorized Representative
Robert McGowen 12/11/2018
Name of Authorized Representative
SVP Sales
Title

City Supplier ID: _____

Appendices

- A: Administrative Procedures and Requirements
- B: RFP Documentation
- C: Tech Marketplace Categories
- D: Supplemental Transaction Based Terms

Appendix A

Administrative Procedures and Requirements

The following is a general guide for procedures for ordering Products and Services under the Technology Marketplace. Although they should be similar, procedures are subject to change and this guide is not intended to be a complete list of all work necessary under the Agreement.

The Technology Marketplace is a pool of IT contractors that provide Products and/or Services to City departments on an as-needed basis. Contractor is responsible for responding to City's requests for quotations, bids or proposals for products and services. When a Technology Marketplace Transaction results in a TMTPO, Contractor shall be responsible for procuring the Product or Service and for ensuring that all Products are delivered and Services provided in accordance with the City's specifications, terms and conditions. TMTPO's are awarded to Technology Marketplace contractors in accordance with the policies of the Office of Contract Administration ("OCA") and applicable laws and regulations of City as they may be amended from time to time.

The Technology Marketplace Contractors are divided into three tiers and organized by the Product and service categories for which each has qualified. Competitive solicitations will occur within each tier among contractors in the tier. A competitive solicitation will be required for all Technology Marketplace Transactions greater than a \$10,000 threshold, which may be revised during the term of this Agreement. OCA and Ordering Departments may solicit quotations, bids or proposals from within particular tiers and categories. Tier 1 Transactions shall not exceed \$2,500,000 unless otherwise authorized by the Purchaser, which limit may be revised during the term of this Agreement at the sole discretion of the City. No transaction exceeding \$2,500,000 may be procured through the Technology Marketplace. Tier 2 Transactions shall not exceed \$220,000 for a Commodities transaction, \$110,000 for a Professional Services transaction, and \$600,000 for a General Services transaction. Tier 3 Transactions shall not exceed \$110,000 for a Commodities transaction, \$110,000 for a Professional Services transaction, and \$600,000 for a General Services transaction. Commodities, Professional and General Services are defined according to the definitions provided in Chapter 21 of the San Francisco Administrative Code. The foregoing transaction limits may be revised during the term of the contract at the sole discretion of the City.

A. Summary of the quotation and ordering process

This section describes generally how the day-to-day operations of the Technology Marketplace work. This guide is subject to change. Below is a summary of the current quotation and ordering process:

1. Typically, a City Department emails the appropriate Technology Marketplace Tier and requests competitive written quotations for products or services from three (3) or more contractors as outlined below:

- a. High-dollar purchases are defined as those orders exceeding the Minimum Competitive Amount which is currently set at \$110,000.00.

- b. The Minimum Competitive Amount could change during the life of the new contract.
- c. For Product requests in excess of the Minimum Competitive Amount, Purchasing requires Departments to seek at least one Product Quotation from the Technology Marketplace, and OCA will perform a Request For Quotes (RFQ) amongst the appropriate Marketplace Tier.
- d. For Service requests exceeding the Minimum Competitive Amount, Departments are required to perform a competitive Request For Proposals (RFP) amongst the appropriate Marketplace Tier. Additional Terms and Conditions, insurances, and subcontracting information may be required on a case by case basis.
- e. For all Product requests below the Minimum Competitive Amount, but greater than \$10,000.00, Departments are to solicit competitive Product Quotes from at least three (3) contractors from the appropriate Tier, and OCA will process the request without further solicitation.
- f. For all Service requests below the Minimum Competitive Amount, but greater than \$10,000.00, Departments are required to perform a competitive Request For Proposals (RFP) amongst the appropriate Marketplace Tier. Additional Terms and Conditions, insurances, and subcontracting information may be required on a case by case basis.
- g. For all Product and Service orders below \$10,000.00, Departments are encouraged to solicit competitive quotations from the appropriate Tiered contractors, but must provide at least a single quotations from one of the appropriate Technology Marketplace contractors, and OCA will process the request without further solicitation..
- h. For all appropriate Product & Service orders, Departments should first look to Micro LBEs in Tier 3 if possible for set aside contracting.

2. Under the conditions described above, the Contractor completes the quotation and e-mails it to the Department.

3. The Department submits the requisition supported by the quotations received to the Department of Technology ("DT") for review. If the requisition contains any services, the request is sent to the Civil Service Commission or their designee for review and comment.

4. If a competitive bid is required, OCA will conduct the solicitation on behalf of the Department.

5. Once a requisition is approved, Purchasing creates the TMTPO in PeopleSoft and dispatches the PO to the contractor.

6. All requests for quotations, bids or proposals by a Department will be accompanied by special terms and conditions that apply to that particular procurement. Contractor may be required to execute a TMTPO containing additional contractual provisions as applicable and outlined in Appendix D.

B. Ordering, delivery, invoicing and related procedures

1. Preparing the Quotation

Contractor must provide written responses to requests for quotes within 48 hours (excluding weekends) for products only, and within 7 days (excluding weekends) for products and services, with one of the following: a quote, request for an extension of time (which may or may not be granted), or "no bid".

2. Ordering

a. Products and services shall be ordered by the City by means of a TMTPO. All orders must be approved and issued by Purchasing or as authorized by Purchasing in writing.

b. Contractors shall not accept verbal orders from Departments or any order that is not in PeopleSoft, the City's Financial and Procurement System, on a [new term] approved by Purchasing. Contractors shall accept orders by dispatch via PeopleSoft, fax, or e-mail.

c. Within three working days after receipt of an order, the Contractor must verify the accuracy of the order and provide written or electronic notification of Contractor's acceptance or rejection of the order and delivery dates.

d. Contractor shall not accept orders from any Department that has had its ordering privileges suspended. A list of Departments receiving such suspensions will be furnished to the Contractor by Purchasing.

e. If an item is discontinued, the Contractor must notify Purchasing and the end user Department within three working days of receipt of an order or upon notification by the manufacturer or distributor (whichever comes first) that the order cannot be filled. The Contractor must not fill the order with a substitute item without the prior written approval of Purchasing. Items that are substituted without approval may be returned at no cost to the City and the order cancelled.

3. Delivery

a.. Contractor shall deliver products to Departments within ten City business days after receipt of the order, unless the product is not available from the manufacturer. Contractor must notify any Department placing an order within 72 hours if delivery of that order will be delayed beyond ten City business days. Contractor must keep Technology Marketplace customers apprised of changes in the delivery status of their delayed orders.

b. Contractor must deliver, free of charge, all products sold through the Technology Marketplace. All shipments of Products shall be made "FOB Destination" to all City delivery locations identified on the TMTPO. Some delivery locations may be outside of San Francisco City limits.

c. Orders must be delivered in total, unless a prior written authorization for partial shipment has been received from the Technology Marketplace customer placing the order.

d. All Products shall be delivered inside the building designated in the TMTPO.

e. If the Contractor fails to deliver an article or service of the quality, in the manner or within the time called for by this Agreement or an individual order, then City may cancel the order at no cost to the City and acquire such article or service from any source. If City pays a greater price than that named in the Agreement or order for such article or service, the excess price may be charged to and collected from Contractor and/or from the financial guarantee provided by Contractor; or, the City may treat the failure as a default subject to all applicable rights and remedies under the Agreement; or, the City may return deliveries already made and receive a refund from Contractor.

4. Invoicing

Invoices may be submitted only after delivery is complete. Invoices must clearly state the terms of any "prompt pay" discount. A packing slip must be included with each shipment of products and must show the order number, a complete list of items delivered, and the Department name and contact person. The order number must also appear on the outside of the package.

5. Return rights

Contractors shall accept all Standard Products if they have not been opened, for return within thirty days of delivery and credit the customer in full. The City shall not pay any restocking fees. Standard Products are products from the product categories identified in the RFP. For all other products, Contractors may only pass through actual restocking fees incurred from a third party. Administrative costs and handling fees are not allowed.

6. Cancellation

Contractor must allow any order, other than orders of non-Standard Products, to be cancelled by the Department that placed the order 7 days prior to its scheduled delivery.

7. Title and Warranties

a. Warranty Service

Contractors shall transfer all warranties offered by manufacturers to the City on all products within 48 hours (excluding weekends) of delivery to City. The Contractor must also offer any additional warranty services offered by a manufacturer for purchase.

b. Passage of title

Contractors must pass title of product purchased to the City within 48 hours (excluding weekends) of delivery and the City must be eligible for all benefits of ownership including free services provided under manufacturer's warranties within 48 hours (excluding weekends) of delivery of product. If after 48 hours the City cannot obtain service under the manufacturer's warranty, because title has not been properly passed to the City by the Contractor or the Contractor has not properly recorded ownership, the City shall immediately notify the Contractor. Contractor will have 24 hours to record title of the product properly, repair the product or replace the non-working product with a comparable working product. Failure to comply with any of the above may result in irreparable harm to the City and a \$100 per day liquidated damage will be assessed from the date that the issue is first reported by the City.

8. Software Licenses

All software licenses procured through the Technology Marketplace shall be passed on to the City within 48 hours (excluding weekends) of delivery and the City must be eligible for all benefits of ownership including free services provided under manufacturer's warranties within 48 hours (excluding weekends) of delivery of software license. Failure to comply with any of the above may result in irreparable harm to the City and a \$100 per day liquidated damage will be assessed from the date that the issue is first reported by the City.

C. Communications with the City

1. General communications with the City

a. Contractors must make reasonable efforts to respond to inquiries from City Departments within one business day. City inquiries may include requests for consultation, design, pricing, order status, product comparisons, compatibility information and return information.

b. Contractors must provide a toll-free number to accommodate telephone inquiries staffed by adequate personnel to provide prompt, courteous, and informed answers to customer inquiries within two hours of the customer's initial call. Contractors must offer a "Help Desk" option to Technology Marketplace clients.

2. E-mail

Contractors must provide E-mail communication capacity with the City. Such E-mail communication must be compatible with that used by the City and any public sector entities to which the Technology Marketplace Contract applies.

3. Account Manager

a. Contractors must provide an Account Manager to function as the single point of contact with the City at the Technology Marketplace. The Account Manager must be dedicated to servicing the City's account exclusively, and cannot be used to service other accounts of the

Contractor. This person will be responsible for all aspects of the Agreement and its facilitation. The Account Manager must be available to the City by phone, fax and e-mail

b. The proposed Account Manager should meet with Purchasing at least once per month, or as the need arises, at no additional cost to the City to ensure that services continually meet the City's needs.

D. General product policies

1. New products

a. Contractors must sell only new products to the City. Contractors must offer the latest commercially available versions of any and all hardware and software sold to the City. The City will not accept "gray market products."

b. If the latest commercially available version is not provided at the time of an order, the version sold must be replaced with the latest version when it becomes available, giving the City full credit for the version that was temporarily supplied.

c. If a new product is no longer available, then a remanufactured product will only be considered upon prior written notification from Contractor to the City. A remanufactured product will not be shipped to the City unless Purchasing has issued a written letter of acceptance. Remanufactured equipment will only be accepted if it includes the full manufacturer's warranty, is eligible for inclusion under any applicable maintenance contracts and can be certified (as applicable) for maintenance purposes at no additional cost to the City.

2. Prohibited products and minimum specifications

From time to time, the City reserves the right to prohibit Contractor from selling to the City certain products, and to prohibit user Departments from purchasing the same. The City may also set minimum specifications for performance or energy efficiency that may be updated from time to time. Contractor will be required to provide products that comply with these specifications. A Contractor found to be selling products that do not comply with these specifications may be suspended from selling to the City under this Agreement for a period of up to 3 months.

3. Environmentally preferable product purchasing

a. The City wishes to ensure that its expenditures of public money are made in a manner consistent with its human health and environmental policies. A primary tool for meeting this goal is the purchase of environmentally preferable products, that is, products for which the environmental impacts have been considered and found to be less damaging to the environment and human health than competing products and services that serve the same purpose. The Precautionary Purchasing Ordinance (San Francisco Environment Code, Chapter 2) establishes the framework for environmentally preferable purchasing efforts in San Francisco.

b. Computer equipment has been designated as a high priority product category for the City's environmentally preferable purchasing efforts. It is the intention of the City to contract with computer equipment vendors that are willing and able to work as active partners with City staff in promoting environmentally preferable purchasing. The City also wishes to reward vendors and manufacturers that are leaders in reducing the overall environmental impacts of their operations. Vendors selected to participate in this contract will be expected to maintain complete and easily accessible environmental information on their product offerings, including—but not limited to—listings of available equipment that meets the federal Electronic Products Environmental Assessment Tool (EPEAT) criteria, Energy Star® certified product offerings, and information necessary for completing the Federal Electronics Challenge Product Information Sheet. Vendors will be required to offer EPEAT silver- and gold-certified computer products as part of this contract. The City also intends to continually upgrade its environmental criteria for computer purchases.

E. Maintenance and Repair

All maintenance and repair work will be performed by qualified and trained personnel. Contractor must offer written quotes for all product repairs including an estimate of the time and cost of repairs.

F. Consulting and Professional services projects

1. General

a. The professional services category consists of services such as project management, software development, hardware and software installation, system design, training, and other professional services related to the deployment of technology. It excludes sales and routine maintenance of hardware and software.

b. A Contractor must submit a detailed Scope of Work defining any consulting or professional services project requested by a Department. The Scope of Work may be subject to approval by DT and may be subject to other reviews such as the Civil Service Commission or their designee before the project will be permitted to proceed. As applicable, the City may request that the project include a transition plan detailing how the project will eventually be transitioned to City personnel, including a designation of City employees and training plans.

c. Performance Bonds may be required by Ordering Departments on a project by project basis based on the level of risk associated with the project

2. Projects over \$110,000

a. The Contractor must submit the following to the requesting Department:

i. A detailed Scope of Work ("SOW") defining the project to be delivered to the Department.

- ii. The SOW should include a schedule with agreed upon deliverables and milestones.
- iii. The SOW should designate any critical milestones that would be subject to liquidated damages for delay, if applicable.
- iv. The name of the project management software that will be used (such as MS Project).
- v. Estimated cost of sub-contractors and materials.
- vi. Training should be specified as a separate line item and deliverable.

Including:

- 01. A detailed description of the training and a list of skills that will be made available through the training to provide for the ongoing maintenance of said project.
- 02. Estimated timeframe for training.
- 03. Number of employees to be trained and the number of hours of training to be provided to each employee.
- 04. The cost associated with training.
- 05. Travel must conform to CONUS guidelines.

b. The Contractor must agree to 10% retention by the City on progress payments. The retention will be released for payment to the Contractor when the project is accepted by the Department. Progress payments will be linked to a specific deliverable or the meeting of a specific milestone.

c. The Contractor may be required to provide formal status reports during the life of the project. The format of the status report and the frequency of its preparation will be determined during the project approval process and will be dependent upon a number of variables such as:

- i. Estimated cost
- ii. Project complexity
- iii. Estimated time
- iv. Other aspects of the project deemed relevant by the City

d. Any consulting or personal services project that exceeds \$100,000 or is expected to require over 90 days to complete may require quarterly meetings that include representation from:

- i. The ordering Department
- ii. COIT and/or DT
- iii. Contract Monitoring Division ("CMD")
- iv. The Technology Marketplace Contractor
- v. All project sub-Contractors

G. Cloud Services

Technology Marketplace Transactions for Cloud Services shall first be reviewed by the City's Chief Information Security Officer, Risk Management, and the Ordering Department's City Attorney, before they are presented to OCA for issuance of a TMTPO.

H. Pricing policies

1. Pricing

Purchases made within the Marketplace will be competitively solicited.

2. Pricing offered to other customers

Should a Contractor participate in any government, educational, or other special pricing program, e.g., CMAS, GSA, Western States Contracting Alliance, etc., the Contractor must make the same pricing available to the City.

3. Mandatory federal and state fees

Contractor shall be responsible for collecting applicable federal and state mandatory fees with no additional cost mark-up to City, and shall be responsible for remitting the fees to the appropriate agency, including, but not limited to, the California Electronic Waste Recycling Fee: http://www.boe.ca.gov/sptaxprog/electronic_waste_recycling_fee.htm.

4. Payment for Travel Expenses and Other Direct Costs (ODC)

The need for travel under this Agreement or ODCs shall be approved in advance of the date of travel in writing by a memo stating the dates of the travel, the purpose, the planned expenses by person, with the City's Project Manager's dated signature indicating approval. Reimbursable expenses shall include actual direct costs (with no mark up) of expenses directly incurred by Contractor. Payments will be made by City to Contractor within 30 days after the City has received Contractor's invoice for expenses, submitted in compliance with the United States General Services Administration per diem rates (CONUS) for San Francisco at <http://www.gsa.gov>.

The following items will be eligible for reimbursement as ODCs:

- a. Contractor's out-of-town travel ("out-of-town" shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, Solano);
- b. Contractor's out-of-town meal, travel and lodging expenses for project-related business trips, including, but not limited to:

i. Rental vehicle: Contractor must select the most economical rental agency and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented;

ii. Personal vehicle use: Contractor will be paid per mile as established by the United State Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties. Contractor shall submit to the City an approved mileage log with his/her expense sheet;

iii. Contractor meal and lodging expenses shall be reasonable and actual but limited to CONUS per diem rates.

Anything not listed above is not eligible for reimbursement.

I. Cooperative Agreement

1. The Director of Purchasing may allow other public agencies or non-profit organizations made up of multiple public agencies to utilize this Agreement to obtain some or all of the commodities to be provided by Contractor under the same terms and conditions as the City.

2. With the exception of City, Contractor shall charge each public agency (the "Ordering Agency") that procures any goods or services under the Technology Marketplace an administrative fee in the amount of 1.9% on each transaction. Contractor shall pay the administrative fee irrespective of whether the Ordering Agency has paid the amount of the fee to Contractor. Contractor shall provide City a monthly report detailing each invoice for goods or services that Contractor submitted to an Ordering Agency. The City may modify the amount of the administrative fee for any fiscal year (July 1 to June 30).

3. Contractor agrees that this does not create a contractual relationship between City and any Ordering Agency, and that City shall have no liability to Contractor arising out of any agreement between Contractor and any Ordering Agency for goods or services under the Technology Marketplace.

J. Reports

1. Monthly sales reports

By the tenth day of each month, or the next workday thereafter, Contractors must deliver a report to Purchasing, of products and services sold the previous month, including: the type, quantity, manufacturer name, manufacturer's part number and description, price paid per item and name of Department. The City may make changes to the format or specifications for this report. The Contractor must comply with all such changes. Contractor shall prepare and submit additional reports in accordance with format and content specifications to be provided by Purchasing.

2. LBE report

Contractors must provide CMD with CMD Form 7 demonstrating LBE participation and CMD Form 9, if applicable, by the tenth day of each month or the next workday thereafter.

3. Proposed Subcontractors report

Prior to commencing work on any project involving the use of subcontractors, Contractors will submit a list of all proposed subcontractors to the ordering Department before that project can be approved by City. Contractor must submit supplemental subcontractor reports during the course of the project to show any substitution or addition of subcontractors. The substitution and addition will be subject to Department and City's approval. Please provide the following information for each sub-Supplier: name; address; telephone number; contact name; summary of work to be performed; and mark-up percentage.

K. Local Presence

Contractor shall have a business presence within the City and County of San Francisco for the duration of this Agreement. A "business presence" means an office, retail location, warehouse or service facility within the City limits, in a location that is not residentially zoned. Home offices or home warehouses will not be considered to satisfy this requirement. Firms certified by the Contract Monitoring Division as LBEs automatically meet this requirement. All of the Contractor's offices that are intended to support the requirements of this RFP must be open and its Technology Marketplace personnel must be available during normal working hours Monday through Friday (8 a.m. to 5 p.m.) except for official City holidays.

L. Green Purchasing Policies

Contractors must offer processes and commit to ensure compliance with City green purchasing requirements. Contractor must agree to comply with the City's Green Purchasing policies established by the Department of the Environment as updated from time to time.

1. Client Education: Contractor shall educate departments on environmentally preferable ('green') product offerings designated by the City at the following link:
<https://www.sfapproved.org/>.
2. Free Take Back and Recycling of Packaging Materials: Proposers shall offer free take back and recycling of packaging materials to City departments.

M. Refreshing the Marketplace

1. The Marketplace may periodically be re-opened to allow new vendors to apply to get into the Marketplace and to allow current vendors to propose new product and service categories requested by the City.
2. New Vendors

When the Marketplace is re-opened, it will be open to new vendors interested in joining the Marketplace. New vendors will go through the same evaluation and selection processes described in this RFP. Contracts awarded to new contractors will contain the same terms and conditions as the contracts awarded to original contractors, with the exception that the duration term of the new contracts may be limited to the duration term remaining on the original contracts at the time the new contracts are awarded, such that all contracts, those of original and new contractors, will end on the same date. New contractors may provide any allowable category within the Marketplace.

3. New Categories

The City may add new product and service categories to the Marketplace and allow existing and new contractors to apply for the new categories.

N. Incorporation

All terms and conditions in the Marketplace Agreement shall be incorporated into every Marketplace Transaction.

O. Marketplace Transactions Surviving the Term of this Agreement

1. Marketplace Transactions may extend beyond the term of the Agreement. In such situations, the terms and conditions of the Agreement shall be incorporated into the new term created under the Marketplace Agreements and shall survive the end of the contract term until the date agreed to in the new term.
2. At least ninety (90) days before the Agreement expires, the Contractor shall provide the City with a list of all Marketplace Transactions for which obligations extend beyond expiration of this Agreement. At City's direction, Contractor shall assign to City all of the Contractor's right, title, and interest that will not be fully executed or performed by the Agreement expiration date, including, without limitation, ongoing software licenses and software maintenance agreements not previously assigned to City. City shall have the right, in its sole discretion, to direct the Contractor to assign any and all such orders and subcontracts.

Appendix B
RFP Documents and Contractor's Response

The Revised RFP 99400 "Tiers 1 and 2 of the Technology Marketplace 2.0" dated June 20, 2018, all accompanying Addenda, and Contractor's proposal in response to the RFP, are incorporated herein by reference as though fully set forth herein.

Appendix C
Tech Marketplace Categories

Contractor has been qualified to provide products and/or services within the following categories of the Technology Marketplace:

1. Products
 - a. Cisco
 - b. Dell
 - c. HP
 - d. HPE
 - e. IBM
 - f. Juniper
 - g. Microsoft
 - h. VMWare
 - i. Other
2. Hardware Maintenance Services
3. Training Services
4. Professional Services
5. Cloud Services

Appendix D
Supplemental Transaction Based Terms

Agreements are to be executed as applicable on a per project or purchase basis, substantially in the form of the Technology Marketplace Term Sheet Templates found at the Office of Contract Administration's Resources website: <https://sfgov.org/oca/frequently-asked-questions-0> as may be modified in the future. Contractor acknowledges and agrees that the terms and conditions of the executed Technology Marketplace Term Sheet shall control over the applicable City purchases.

1. P-530 Equipment Maintenance Term Sheet Template;
2. P-540 Software Maintenance Term Sheet Template;
3. P-542 Software Development Term Sheet Template;
4. P-545 Software Licensing Term Sheet Template;
5. P-600 Professional Services Term Sheet Template; and
6. P-648 Software as a Service Term Sheet Template.

