File No. 231154 **Committee Item No.** 5
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee **Date** November 29, 2023
Board of Supervisors Meeting **Date** _____

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OTHER **(Use back side if additional space is needed)**

☒	☐	Original Agreement 6/1/2019
☒	☐	Modification No. 1 3/18/2020
☒	☐	Modification No. 2 4/5/2022
☐	☐	
☐	☐	
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☐	☐	

Completed by: Brent Jalipa **Date** November 21, 2023
Completed by: Brent Jalipa **Date** _____

[Contract Amendment - Golden Gate Petroleum - Renewable Diesel - Not to Exceed $86,750,000]

Resolution authorizing the Office of Contract Administration to enter into a Third Amendment (Modification 3) to Contract 1000013880 between the City and County of San Francisco and Golden Gate Petroleum for the purchase of renewable diesel for all City departments, increasing the contract amount by $18,750,000 for a new total not to exceed amount of $86,750,000 and extending the duration by five months from May 31, 2024, for a total agreement term of June 1, 2019, through October 31, 2024; and to authorize the Office of Contract Administration to enter into amendments or modifications to the contract prior to its final execution by all parties that do not materially increase the obligations or liabilities to the City and are necessary to effectuate the purposes of the contract or this Resolution.

WHEREAS, Charter, Section 9.118(b), requires the Board of Supervisors to approve by Resolution contracts estimated to cost the City $10,000,000 or more; and

WHEREAS, Contractor was selected via competitive solicitation (Invitation for Bids 1449) pursuant to Administrative Code, Section 21.1, issued December 2018; and

WHEREAS, The Office of Contract Administration entered into Contract 1000013880 with Contractor for the provision of renewable diesel for the City's buses, trucks, cars, and equipment with an initial not-to-exceed amount of $45,000,000 and an initial duration of two years and 10 months, from June 1, 2019 to March 31, 2022, as amended by:

Modification No. 1, March 18, 2020, updating the contact terms and conditions,

Modification No. 2, April 5, 2022, extending the contract duration by two years and two months to May 31, 2024, and increasing the not-to-exceed contract amount by $23,000,000, for a total not-to-exceed amount of $68,000,000; and

WHEREAS, The Office of Contract Administration seeks to enter into a third amendment (Modification No. 3), increasing the total not-to-exceed contract amount to $86,750,000 and extending the duration by five months to October 21, 2024 to meet the City's critical business needs; and

WHEREAS, The amendment referenced above is on file with the Clerk of the Board of Supervisors in File No. 231154, which is hereby declared to be part of this resolution as if set forth fully herein; now, therefore, be it

RESOLVED, That the Board of Supervisors, under Charter, Section 9.118(b), hereby authorizes the Office of Contract Administration to execute Modification No. 3 to Contract 1000013880 between the City and County of San Francisco and Golden Gate Petroleum to increase the contract amount by $18,750,000 for a total not-to-exceed contract amount of $86,750,000, and extending the duration by five months to October 21, 2024, for a total duration of five years and five months; and, be it

FURTHER RESOLVED, that within 30 days of the modification being fully executed by all parties, the Purchaser shall provide the final copy of modification to the Clerk of the Board for inclusion into the official file.

Item 5 File 23-1154	**Department:** City Administrator (ADM)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve Modification No. 3 to the contract between the City and Golden Gate Petroleum, increasing the not-to-exceed (NTE) amount from $68,000,000 to $86,750,000, and extending the term by five months, from May 31, 2024 to October 31, 2024 for a total contract term of five years and five months.

Key Points

- In 2019, the Board approved an initial two-year and ten-month agreement with Golden Gate Petroleum to deliver renewable diesel to Central Shops fueling stations and other Departments. The contract has been amended twice. The City is not obligated to purchase any specific quantity of diesel. The price the City pays for renewable diesel is based on a fixed markup or markdown (depending on the quantity delivered) from the daily price per gallon of renewable diesel.
- Although the term of the current contract does not end until May 2024, the current contract not-to-exceed amount is nearly depleted. Average spending on the contract has nearly doubled from $967,711 in FY 2019-20 to $1.7 million in the first four months of FY 2023-24. This is driven primarily by an increase in diesel prices during that period. The proposed not-to-exceed $86,750,000 covers 12 months of usage, from November 1, 2023 through October 31, 2024, with a 20 percent contingency to cover increases in pricing.
- In addition, OCA has proposed to amend the agreement to extend the term by an additional five months to allow the diesel contract term to coincide with the contract term of the City's gasoline contract. This would allow OCA to re-solicit for both gasoline and diesel fuel under one large procurement. According to OCA, this could result in contract and vendor management efficiencies, as well as likely yielding cost-savings through the larger combined fuel contract.

Fiscal Impact

- Fuel purchases are paid from each department's budget. General Fund Departments account for 17.3 percent of the spending to date on the agreement, and the remaining 82.7 percent is paid from enterprise revenues.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

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

BACKGROUND

In December 2018, the City's Office of Contract Administration (OCA) solicited competitive bids for renewable diesel[1] for all City departments and received responses from two suppliers.

OCA awarded the primary contract (Contract ID 1000013880) to the lowest bidder, Golden Gate Petroleum, for an initial not to exceed (NTE) amount of $45,000,000 and a term of two years and ten months, from June 1, 2019 through March 31, 2022 (File 19-0334)[2]. The contract has been amended twice, including extension of the term through May 31, 2024 and an increase of the not to exceed amount to $68,000,000, as summarized below in Exhibit 1.

Exhibit 1. Modification History to City Gasoline Contract (Contract ID No. 1000013880)

Modification	Start Date	End Date	NTE Amount	Changes
Original Contract	06/01/19	05/31/22	$45,000,000	
No. 1		No Change	$45,000,000	Emergency delivery provision
No. 2		05/31/24	$68,000,000	Extend Term, Increase NTE Amount
No. 3 (proposed)		*10/31/24*	*$86,750,000*	*Extend Term, Increase NTE Amount*

Source: OCA

Note: Modification No.1 added a clause specifying fuel prices and acceptable delivery delays in the event of an emergency.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve Modification No. 3 to the contract between the City and Golden Gate Petroleum (Contract No. 1000013880), increasing the not-to-exceed amount by $18,750,000, from $68,000,000 to $86,750,000, and extending the term by five months, from May 31, 2024 to October 31, 2024 for a total contract term of five years and five months, from June 01, 2019 through October 31, 2024.

Under the original agreement, the maximum contract period is not to exceed five years. The proposed five-month extension would allow the diesel contract term to coincide with the

[1] Renewable diesel is produced by from cooking oil and other vegetable or animal fats that is blended with petroleum diesel but in a higher concentration than traditional biodiesel. The contract also provides for red dye diesel which is petroleum-based diesel that is intended for use in offroad vehicles.

[2] The resolution in File 19-0334 stated that the initial contract term would be three years from April 2019 through March 2022, but the contract as executed by OCA did not take effect until June 2019.

contract term of the City's gasoline contract.[3] This would allow OCA to re-solicit for both gasoline and diesel fuel under one large procurement. According to OCA, this could result in contract and vendor management efficiencies, as well as likely yielding cost-savings through the larger combined fuel contract.

Services

Under the five-month contract extension, Golden Gate Petroleum would continue delivering renewable diesel fuel to Central Shops fueling stations, the San Francisco Municipal Transportation Agency, San Francisco Fire Department, and to the San Francisco Public Utilities Commission's East Bay locations, Peninsula locations, and PUC Sierra locations. The fuel will be used by departments throughout the City. The City is not obligated to purchase any specific quantity of diesel. The price the City pays for renewable diesel is based on a fixed markup or markdown (depending on the quantity delivered) from the daily price per gallon of renewable diesel, as published by the industry group known as the Oil Price Information Services (OPIS). While the markup or markdown price remains fixed, the OPIS price per gallon fluctuates daily. The price also depends on the diesel type, delivery location, and gallons ordered.

Performance

The contract requires Golden Gate Petroleum to pre-schedule all deliveries to City sites, provide emergency deliveries at no additional cost, and include ordering information on packing slips for each delivery. Golden Gate Petroleum is required to pay for an annual third-party audit of Renewable Diesel deliveries to the City. OCA does not monitor contractor performance.

OCA reports that the City's Central Shops samples tanks at least once per year and sends results to a laboratory outside of the City. There have not been any issues with noncompliance with State or local fuel standards.

Contract Expenditures

Although the term of the current contract does not end until May 2024, the current contract not-to-exceed amount is nearly depleted. As of November 21, 2023, the City had spent $65,880,603 on this contract. There remains $2,119,397 in the contract spending authority (excluding encumbrances), with approximately six months (December 1, 2023-May 31, 2024) remaining in the prior contract term. In 2022, expenditures from December through May were $8.7 million. Without Modification No. 3, the prior contract term would have ended on May 31, 2024, and OCA projected, based on purchase orders submitted, that the current contract not-to-exceed amount of $68,000,000 would be surpassed before then.

As shown in Exhibit 2 below, average spending on the contract has nearly doubled from $967,711 in FY 2019-20 to $1.7 million in the first four months of FY 2023-24. This is driven primarily by an increase in diesel prices during that period.

[3] The Board approved an extension of the City's prior gasoline contract in November 2023 through November 19, 2023 (File 23-1037). Following a competitive solicitation, OCA entered into a successor agreement with Mansfield Oil with a term through November 2024.

Exhibit 2 below summarizes the total expenditures on the City's contract with Golden Gate Petroleum.

Exhibit 2: Golden Gate Petroleum Fuel Contract Total Expenditures by Department, FY 2018-19-FY 2023-24*

Dept	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Total	%
Airport	43,190	204,199	182,864	348,123	354,427	95,379	1,228,182	1.9%
MTA	39,248	9,062,478	8,012,905	13,179,223	14,561,247	6,228,199	51,083,299	77.5%
PUC	15,663	380,134	360,486	579,790	594,864	274,138	2,205,075	3.3%
Enterprise Subtotal	**98,100**	**9,646,811**	**8,556,256**	**14,107,136**	**15,510,538**	**6,597,715**	**54,516,555**	**82.7%**
City Administrator	132,569	1,344,690	1,277,524	2,173,579	2,050,500	733,441	7,712,304	11.7%
Public Health	0	36,222	27,828	4,088	73,165	0	141,303	0.2%
Fire	3,438	538,302	524,235	902,110	1,004,081	324,603	3,296,769	5.0%
Recreation & Parks	0	46,505	31,590	48,542	65,631	$18,949	211,216	0.3%
Juvenile Probation	0	0	2,456	0	0	0	2,456	0.0%
General Fund Subtotal	**136,008**	**1,965,719**	**1,863,633**	**3,128,318**	**3,193,377**	**1,076,993**	**11,364,047**	17.3%
Total	**234,108**	**11,612,529**	**10,419,888**	**17,235,454**	**18,703,915**	**7,674,708**	**65,880,603**	100.0%
Avg./Month	117,054	967,711	868,324	1,436,288	1,558,660	1,705,491		

Source: OCA

Notes: Expenditure data is from June 1, 2019 to November 1, 2023. This is not representative of all the City's fuel spending, which is spread among multiple contracts.

The San Francisco Municipal Transportation Agency (MTA) accounts for a majority ($51,083,299, or 77.5 percent) of contract expenditures. The General Fund Department with the largest contract expenditures is the City Administrator's Fleet Management Division (FMD) ($7,712,304 or 11.7%). FMD purchases gasoline and diesel from the citywide contracts to supply three City-owned and operated gas stations and one emergency tanker truck that resides at Central Shops and is used to fuel diesel trucks (such as fire trucks) during an emergency.

The Fleet Management Division, which accounts for a majority but not all General Fund expenditures on fuel, has a fuel budget of approximately $7.6 million in FY 2023-24 for gasoline, diesel, and propane. The Fire Department has the second highest contract expenditures amongst General Fund Departments ($329,769 or 5%). Fire uses diesel to fuel fire engines and trucks and has 20 fuel tank locations throughout the City and on Treasure Island for refueling purposes.

FISCAL IMPACT

The Office of Contract Administration projects total contract spending of $86.7 million, as shown below in Exhibit 3. The proposed not-to-exceed $86,750,000 covers 12 months of usage, from

November 1, 2023 through October 31, 2024, with a 20 percent contingency to cover increases in pricing.

Exhibit 3: Projected Spending

Current Agreement	68,000,000
Projected Spending	$15,600,000
Contingency (20%)	$3,120,000
Total Projected Spending	$88,720,000
Not To Exceed (Rounded)	**$86,750,000**

Source: BLA analysis of actual spending data.

Notes: Projected spending is based on the average monthly spend over the lifetime of the contract, approximately $1.3 million per month. A contingency of 20% is reasonable given the volatility of fuel prices. If the spending continues at its current spend rate ($1.7 million per month), we estimate total spending of $88.5 million, which is higher than the proposed not-to-exceed amount.

Funding Sources

Funding for the proposed amendment was included in the FY 2023-24 adopted budgets of the City departments that use diesel, as previously appropriated by the Board of Supervisors. As shown above, General Fund departments' contract expenditures over the past approximately five years (from June 1, 2019 through November 1, 2023) account for $11,364,047 out of the total spend amount of $65,880,603, or 17.3 percent.

Three enterprise departments utilize the fuel from the City's contract with Golden Gate Petroleum: San Francisco Public Utilities Commission (PUC), San Francisco International Airport (AIR), and the San Francisco Municipal Transportation Agency (MTA). Enterprise revenues pay for these departments' contract expenditures of $54,516,555.

RECOMMENDATION

Approve the proposed resolution.

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

Contract Modification 3

Renewable Diesel – Primary Contractor

Supplier:
Golden Gate Petroleum
1340 Arnold Drive Suite 231
Martinez, CA 94553
Supplier Cell Phone (for DocuSign): 925-890-6413
Supplier e-mail: pat@ggpetroleum.com

Date: October 31, 2023
Buyer Name: Elizabeth Bessman
Term contract: TC70886
Contract ID: 1000013880
Supplier ID: 0000019410
Type: Indefinite Quantity
Not-to-exceed amount: **$86,750,000**

The history of this contract and its modifications is as follows:

Modification	Start date	End date	Amount	Other Changes
Original contract	6/01/2019	5/31/2022	$45,000,000	
1	No Change	No Change	$45,000,000	Add info. to cover SF emergency
2	No Change	5/31/2024	$68,000,000	Extend contract term & NTE incr.
3	No Change	10/31/2024	$86,750,000	Extend contract term & NTE incr.

This Modification No. 3 changes the contract as follows:

1. Increases the Not-to-exceed amount by Adds an additional $18,750,000, from $68,000,000 to $86,750,000.
2. Extends the contract duration by five months, to October 31, 2024.

All other terms and conditions remain the same.

CITY

Recommended by:

_____

Mark Farley
Supervising Purchaser
Office of Contract Administration

Approved:

_____

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

Golden Gate Petroleum

_____

Pat O'Keefe
Vice President
1340 Arnold Drive Suite 231
Martinez, CA 94553

City Supplier Number: 0000019410

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CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CONTRACT ADMINISTRATION
PURCHASING DIVISION

CONTRACT 70886

A W A R D
Renewable Diesel-Primary Contractor
For the Term June 01, 2019 through March 31, 2022

Contract Award
Renewable Diesel (Primary Contractor)

Golden Gate Petroleum
Pat O'Keefe
1340 Arnold Drive, Suite 231
Martinez, CA 94553
pat@ggpetroleum.com

Date: June 01, 2019
Buyer: Howard Tevelson
Term Contract: OCA TC 70886
Contract ID: 1000013880
Supplier ID: 0000019410
Type: Indefinite Quantities-Commodities
Not-to-Exceed Amount: 45,000,000.00

The City and County of San Francisco hereby accepts your offer to provide the following:

Renewable Diesel (Primary Contractor)

Term: June 01, 2019 through March 31, 2022

Aggregate/Items: Aggregates 1-6

Payment Terms: Net 30

In case of any conflict between the City's documents and the contractor's documents, the City's documents shall prevail.

Approved by the City:

DocuSigned by:
CD3CF4E2DCB34A8...
Alaric Degrafinried
Director of OCA and Purchaser

Approved by the Contractor:

DocuSigned by:
E81EC16A0E58422...
Pat O'Keefe
Vice President

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A W A R D
Renewable Diesel-Primary Contractor
For the Term June 01, 2019 through March 31, 2022

COMPANY INFORMATION

Name of Company: Golden Gate Petroleum

Address: 1340 Arnold Drive Suite 231

City, State, Zip: Martinez, CA 94553

Contact: Pat O'Keefe

Telephone Number: (925)-228-2222

Fax Number: (925)-335-3748

24-Hour Emergency Number: (800)-244-4516

Email: pat@ggpetroleum.com

Payment Terms: Net 30

Federal Tax I.D. Number: 94-1724955

PeopleSoft Supplier ID: 0000019410

PeopleSoft Contract ID: 1000013324

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A W A R D
Renewable Diesel-Primary Contractor
For the Term June 01, 2019 through March 31, 2022

Award Sheet

Aggregate	Fuel Type	Item No.	Delivery Quantity *(in gallons)*	Contract Price *(money over or under OPIS Daily Average Rack Price)*
1 San Francisco MTA	Renewable Diesel (99%)	101	<=7,400	+$0.12
	Renewable Diesel (99%)	102	>7,401	-$0.10
2 San Francisco Fire Dept. And SFPUC	Renewable Diesel (99%)	201	<=200	-$0.14
	Renewable Diesel (99%)	202	201-500	-$0.14
	Renewable Diesel (99%)	203	501-1,000	+$0.25
	Renewable Diesel (99%)	204	1,001-1,500	+$0.25
	Renewable Diesel (99%)	205	1,501-3,000	+$0.02
	Renewable Diesel (99%)	206	>3,000	-$0.16
	Red Dye Renewable Diesel (99%)	207	<=200	+$0.00
	Red Dye Renewable Diesel (99%)	208	201-500	+$0.00
	Red Dye Renewable Diesel (99%)	209	501-1,000	+$0.50
	Red Dye Renewable Diesel (99%)	210	1,001-2,000	+$0.50
	Red Dye Renewable Diesel (99%)	211	>2,000	+$0.00
3 San Francisco Central Shops And Other Departments	Renewable Diesel (99%)	301	<=200	+$0.55
	Renewable Diesel (99%)	302	201-500	+$0.45
	Renewable Diesel (99%)	303	501-2,000	-$0.15
	Renewable Diesel (99%)	304	2,001-3,500	-$0.15
	Renewable Diesel (99%)	305	3,501-5,000	-$0.15
	Renewable Diesel (99%)	306	5,001-7,400	+$0.15
	Renewable Diesel (99%)	307	>7,400	-$0.10
	Red Dye Renewable Diesel (99%)	308	<=200	-$0.14
	Red Dye Renewable Diesel (99%)	309	201-500	+$0.25
	Red Dye Renewable Diesel (99%)	310	501-1,000	+$0.18
	Red Dye Renewable Diesel (99%)	311	1,001-2,000	+$0.18

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A W A R D
Renewable Diesel-Primary Contractor
For the Term June 01, 2019 through March 31, 2022

	Red Dye Renewable Diesel (99%)	312	>2,000	+$0.18
4 East Bay Locations	Renewable Diesel (99%)	401	<=200	-$0.18
	Renewable Diesel (99%)	402	201-500	+$0.25
	Renewable Diesel (99%)	403	>500	+$0.25
	Red Dye Renewable Diesel (99%)	404	<=2,000	+$0.35
	Red Dye Renewable Diesel (99%)	405	>2,0000	+$0.25
5 Peninsula Locations	Renewable Diesel (99%)	501	<=200	+$0.20
	Renewable Diesel (99%)	502	201-500	-$0.15
	Renewable Diesel (99%)	503	501-1,000	-$0.15
	Renewable Diesel (99%)	504	1,001-1,500	+$0.18
	Renewable Diesel (99%)	505	>1,500	+$0.18
	Red Dye Renewable Diesel (99%)	506	<=200	+$0.00
	Red Dye Renewable Diesel (99%)	507	201-500	+$0.55
	Red Dye Renewable Diesel (99%)	508	>500	+$0.55
6 PUC Sierra Locations	Renewable Diesel (99%)	601	<=200	-$0.20
	Renewable Diesel (99%)	602	201-400	+$0.35
	Renewable Diesel (99%)	603	401-800	+$0.35
	Renewable Diesel (99%)	604	801-1,600	-$0.20
	Renewable Diesel (99%)	605	>1,600	+$0.30

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CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CONTRACT ADMINISTRATION
PURCHASING DIVISION

70886

Renewable Diesel
For the Term June 01, 2019 through March 31, 2022

BID AND CONTRACT CONDITIONS

Getting paid for goods and/or services from the City:

1. All City suppliers receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments.

2. Electronic payments are processed every business day and are safe and secure.

3. To sign up for electronic payments, visit https://sfcitypartner.sfgov.org/ .

4. The following information is required to sign up:

   a. The enroller must be their company's authorized financial representative,
   b. The company's legal name, main telephone number and all physical and remittance addresses used by the company,
   c. The company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor),
   d. The company's bank account information, including routing and account numbers.

If you have questions, please email: sfcitypartner@sfgov.org

Terms Related To Bidding

1. When Bids Are Due; Bid Opening Procedures. Bids must be submitted before the time set for bid opening. Bids will be opened by Purchasing at the hour and place stated in the solicitation documents and in the presence of bidders who attend, and bid prices will be read upon request as time permits. Bidders may inspect the bids after award.

2. Alternates. When the name of a manufacturer, brand or make, with or without model number, is used in describing any item in this document, bids for similar articles will be considered unless otherwise stated. Purchasing shall be the sole judge as to whether such alternate articles are acceptable. Unless bidder states to the contrary, articles offered will be assumed to be the specific articles named in this document. If not offering the specific article named, bidder should enclose with its bid full information, specifications and descriptive data on items offered. Purchasing reserves the right to permit deviations from the specifications if any article offered is substantially in accord with Purchasing's specifications and is deemed by Purchasing to be of as good quality and as fully satisfactory for its intended use. Bidder is responsible for identifying any deviations from Purchasing's specifications.

3. Articles Furnished. Articles and services must comply with applicable laws, ordinances and other legal requirements, including (among others) the Cal-OSHA regulations in Title 8 of the Code of Regulations and, for electrical products, Sections 110.2 and 110.3 (B) of the S.F.

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BID AND CONTRACT CONDITIONS

Electrical Code. In addition, if an electrical item has not been tested by a lab approved by City's Department of Building Inspection (DBI) or Department of Public Works (DPW), Contractor shall notify the requesting department before delivery by writing the department at the "Deliver to" address on the front of the Purchase Order. When a non-tested item is delivered, the department will request approval from DPW. If the department is unable to obtain approval, City reserves the right to cancel the transaction and return the item to Contractor, at no charge to City.

4. Place of Manufacture. No article furnished shall have been made in prison or by convict labor, except, for articles purchased for use by City's detention facilities.

5. Condition of Article. Articles offered and furnished must be new and previously unused, and of manufacturer's latest model, unless otherwise specified herein.

6. Samples. Articles offered as equal to "City sample" must fully conform thereto; "City samples" may be inspected at the place designated by Purchasing. Samples must be furnished as required in this document. Those submitted by successful bidders may be retained for testing or checked against deliveries, in which case allowance will be made to Contractor. Each sample shall be plainly marked in a durable manner with the name of the bidder, the contract proposal number, and the item number. Submitted sample will be deemed to be exactly what bidder proposes to furnish unless otherwise clearly indicated by the bidder in writing with the submittal of the sample. Sufficiency of sample will be determined by Purchasing. Do not enclose sample with bid, and do not wrap bid in package with sample.

7. FOB Point. F.O.B. destination in San Francisco, and other location as required by the City, freight prepaid and allowed.

8. Price List Discounts. When bids are based on prices from a catalog or price list, bidder shall furnish copies of the catalog or price list in the format requested herein. Contractor shall furnish additional lists as required. Bids will be considered for price lists offered other than specified provided the alternate price list can be readily compared on an overall basis with the specified price list. Bidder's price list discounts must remain firm during the term of the contract.

9. Bidding on Separate Items and or in the Aggregate. Bidders may bid separately for any item unless otherwise provided. Bidders may make an offer on one, some or all items, unless otherwise provided. **For this bid opportunity the award will be made as one Aggregate. To be responsive for an Aggregate bidder must bid on all items within that Aggregate and bid on all Aggregates for this bid opportunity.**

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

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BID AND CONTRACT CONDITIONS

11. Awards; Rejection of Bids. Purchasing may make awards on one, some or all items in a bid. Purchasing reserves the right to reject any and all bids.

12. Cash Discounts; Terms of Payment (Commodities and Equipment only). Cash discount (discount for prompt payment) will be taken into consideration in determining the low bid under the following conditions:

- Discount period must be at least 30 days. Example: "1%, 30 days. Net 31."
- The maximum cash payment discount that will be considered when determining the lowest bid will be 2%.
- The discount period will start upon date of completion or delivery of all items on any Purchase Order or other authorization certified by Controller, or upon date of receipt of properly prepared invoices covering such deliveries, whichever is later.
- Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing the City's check or the date of direct deposit into supplier's bank account.

Whether or not the discount is taken into consideration in determining the low bid, it will be deducted from the invoice amount in accordance with the provisions above, unless otherwise provided by bidder. No additional charge shall accrue against City in the event that City does not make payment within any time specified by bidder.

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

Terms Related to the Contract

14. Inspection. All articles supplied shall be subject to inspection and rejection by Purchasing or any department official responsible for inspection.

15. Contract Interpretation; Choice of Law/Venue; Assignment. Should any questions arise as to the meaning and intent of the contract, the matter shall be referred to Purchasing, who shall decide the true meaning and intent of the contract. This contract shall be deemed to be made in, and shall be construed in accordance with the laws of, the State of California; the venue

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BID AND CONTRACT CONDITIONS

for all claims arising out of this contract shall be in San Francisco. This contract may be assigned only with the written approval of Purchasing.

16. Hold Harmless and Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Contract, including but not limited to, the use of Contractor's facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Contract, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorney's fees, court costs and all other litigation expenses for any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequences of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Contract.

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

18. Budget and Fiscal Provisions. This Contract is subject to the budget and fiscal provisions of City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and 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 Contract will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Contract will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to

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BID AND CONTRACT CONDITIONS

make appropriations for this Contract in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Contract.

19. Default; Remedies. On and after any event of default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Contract or to seek specific performance of all or any part of this Contract. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any event of default. Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Contract or any other contract between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such event of default and any liquidated damages due from Contractor pursuant to the terms of this Contract or any other contract. All remedies provided for in this Contract may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

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

21. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval

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BID AND CONTRACT CONDITIONS

and certification by the Controller of the City. The City is not required to honor any offered or promised additional funding for a contact which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

22. Taxes. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Contract, or the services delivered pursuant hereto, shall be the obligation of Contractor. Contractor recognizes and understands that this Contract may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Contract entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

A. 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.

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

C. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events 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.

D. 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.

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

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BID AND CONTRACT CONDITIONS

24. Nondiscrimination; Penalties

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

B. Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement. The entire San Francisco Administrative Code is available on the web at a site maintained by American Legal Publishing Corporation.

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

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

E. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h)

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and 12C.3(g) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

25. Local Business Enterprise Utilization; Liquidated Damages

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

B. Enforcement. If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or $1,000, whichever is greatest. The Director of the City's Contract Monitoring Division (CMD) or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of CMD") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

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26. MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

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

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

30. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS CONTRACT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR UNDER THIS CONTRACT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL,

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CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS CONTRACT.

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

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

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

34. Bid Protests. Bid protests for purchases of Commodities shall be submitted and responded to in accordance with Rules and Regulations 21.3(i) pertaining to the San Francisco Administrative Code, Chapter 21.

35. Food Service Waste Reduction Requirements. Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars ($100) liquidated damages for the first breach, two hundred dollars ($200) liquidated damages for the second breach in the same year, and five hundred dollars ($500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur

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BID AND CONTRACT CONDITIONS

based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

END OF BID AND CONTRACT CONDITIONS

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

36. Contract Term. The contract period shall be for approximately thirty-six (36) months through to an approximate end date of a March 31, 2022.

37. Contract Extension. This contract may be extended, all or in part, for a period or periods up to one year by mutual agreement in writing. The maximum contract period shall not be more than 5 years.

38. Toll-Free Telephone Number. A contractor located outside of San Francisco is encouraged to provide free telephone services for placing orders. This requirement can be met by providing a toll-free telephone number or accepting collect calls.

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

40. Not used

41. LBE Ordinance. The bid discount will not apply in this contract. This contract is estimated to cost well over the $10,000,000 threshold, whereby the following provision of Section 14B will apply.

42. Claim for Preference –(not Used)

43. LBE bid discount; brokerage services. (Not Used)

44. LBE Subcontracting -

A. Subcontracting to LBEs. Bidder is encouraged to make good faith efforts to award subcontracts to City and County of San Francisco-certified LBEs. This can be achieved through subcontracting, sub-consulting or supply opportunities. With the bid, the bidder is encouraged to provide a description of the type of good faith efforts the bidder estimates it may make under the contract.

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B. Examples of Good Faith Efforts. "Good Faith Efforts" include but are not limited to the following:

(1) Identifying and selecting specific products or services which can be subcontracted to certified LBEs.

(2) Providing written notice to potential LBE subcontractors that Bidder will be bidding on this Contract and will be seeking subcontractors.

(3) Advertising in one or more daily or weekly newspapers, trade association publications, trade oriented publications, trade journals, or other media specified by the City, for LBEs that are interested in participating in the project.

(4) Following up on initial notices the Contractor sent to LBEs by contacting the LBEs to determine whether they were interested in performing specific parts of the project.

(5) Providing interested LBEs with information about the scope of work.

(6) Negotiating in good faith with the LBEs, and not unjustifiably rejecting as unsatisfactory proposals prepared by any LBEs, as determined by the City.

(7) Where applicable, advising and making efforts to assist interested LBEs in obtaining insurance required by the City and the prime contractor.

(8) Making efforts to obtain LBE participation that the City could reasonably expect would produce a level of participation sufficient to meet the City's goals and requirements.

C. Examples of Subcontracting. The following are examples of products which could be subcontracted under this Contract. The list is not intended to be exhaustive:

(1) the products or services which the supplier in turn sells to the City, or components of those products; (see Page 1 of the bid sheet);

(2) packing containers and materials used to ship the City's order;

(3) services of the carrier who delivers the City's orders;

(4) Pro rata share of LBE spending which is part of the suppliers' general and administrative expenses, if the supplier can show that the pro rata share can be reasonably allocated to this contract.

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D. Reports. On a quarterly (January 1 – March 31, April 1 – June 30, July 1 – September 30, October 1 – December 31) basis, the Contractor will provide CMD with reports on LBE subcontracting under this Contract. The report must include a narrative description of the good faith efforts, if any, the Contractor has made during the quarter to provide subcontracting opportunities to LBEs and to meet the percentage goal.

E. CMD Data on LBEs. Contractor will obtain from CMD a copy of CMD's database of LBEs, and this or other information from CMD, shall be the basis for determining whether a LBE is confirmed with CMD. Contractor will obtain an updated copy of CMD's database at least **quarterly**. Please call CMD at (415) 581-2310.

45. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

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

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

48. Contractor's Default. If Contractor fails to fulfill its obligations under this contract proposal, whether or not said obligations are specified in this section, Purchasing reserves the right to: (a) terminate this contract at no cost to the City; (b) take action in accordance with Sections 17 and 19, or (c) exercise any other legal or equitable remedy.

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

50. Incidental and Consequential Damages. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights which City may have under applicable law.

51. Reports by Contractor

Multi-year Term Contracts

Each year, no later than February 15; Contractor shall submit a soft copy report of the total items ordered, by month, under this contract during the preceding calendar year (January 1 – December 31). The report must be in a format acceptable to City and must list by department or location the following: (1) all items awarded under this contract; and (2) total quantity and dollar value of each item ordered, including items for which there were no orders. Contractor must also furnish a separate similar report for the total of all items ordered by City which are not part of this Contract, and any usage reports required prior to the extension of a Contract or Contract Modification. Emailed reports must not be larger than **10MB**.

Contractor shall email reports to:

OCAVendor.Reports@sfgov.org

Any report files larger than **10MB** must be submitted in electronic format on USB drive and mailed to the address shown below with the term contract number and "Annual Supplier Reporting" clearly marked on the envelope/packaging.

Contractor shall mail the reports to:

OCA Supplier Reporting
Re: Term Contract No. 70886
City and County of San Francisco
Office of Contract Administration – Purchasing
City Hall, Room 430

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1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

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

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

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

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

55. Severability. Should the application of any provision of this Contract to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or

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unenforceable, then (a) the validity of other provisions of this Contract shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to 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.

56. Emergency - Priority 1 Service. In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service. Contractor will make every good faith effort in attempting to deliver products using all modes of transportation available. Contractor shall provide a 24-hour emergency telephone number of a company representative who is able to receive and process orders for immediate delivery or will call in the event of an emergency. In addition, the Contractor shall charge fair and competitive prices for items and services ordered during an emergency and not covered under the awarded contract.

57. Contractors Unable to do Business with the City.

A. Generally

Contractors that do not comply with laws set forth in San Francisco's Municipal Codes may be unable to enter into a contract with the City. Some of the laws are included in this Contract Proposal, or in the sample terms and conditions attached.

B. Companies Headquartered in Certain States

This Contract is subject to the requirements of Administrative Code Chapter 12X, which prohibits the City from entering into contracts with companies headquartered in states with laws that perpetuate discrimination against LGBT populations or where any or all of the work on the contract will be performed in any of those states. Bidders are hereby advised that Bidders which have their United States headquarters in a state on the Covered State List, as that term is defined in Administrative Code Section 12X.3, or where any or all of the work on the contract will be performed in a state on the Covered State List may not enter into contracts with the City. A list of states on the Covered State List is available at the website of the City Administrator.

58. Term Bid – Quantities. This is a term, indefinite quantities contract. Unless otherwise specified herein, deliveries will be required in quantities and at times as ordered during the period of the contract. Estimated quantities are approximate only. City, in its sole discretion, may purchase any greater or lesser quantity. Purchasing may make minor purchases of items requested in City's advertisement for bids or contractor's bid from other suppliers when Purchasing determines, in its sole discretion, that the City has an immediate need for such items or that it is not practical to purchase against this contract.

59. First Source Hiring Program

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

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

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

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

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may

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

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

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

(6) Set the term of the requirements.

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

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

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

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

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

E. Liquidated Damages. Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to $5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to $10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

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

b. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of

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employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total $5,000 for first violations and $10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of $5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

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

60. Consideration of Criminal History in Hiring and Employment Decisions

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

B. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, and shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement.

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

D. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

E. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 60(D), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

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

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

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

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

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

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

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

64. Not used

65. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

66. Sugar-Sweetened Beverage Prohibition. Contractor agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

67. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

END OF GENERAL CONDITIONS

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

68. Purpose. The purpose of this contract is to provide the City reliable sources of supply for Renewable Diesel fuel for the City's buses, trucks, cars, vehicles and equipment.

69. Pre-Bid Conference. A Pre-bid Conference will be held as follows:

Location: **San Francisco City Hall**
1 Carlton B. Goodlett Place, Room 431A
San Francisco, ca 94102

Date and Time: **Wednesday, December 19, 2018 at 11:00 am**

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

Note: Please bring a copy of this contract proposal to the Pre-Bid Conference.

It is requested that bidder's questions concerning this Contract Proposal be submitted by email at least 48 hours prior to the date and time of the Pre-bid Conference and directed to:

Howard Tevelson, Senior Purchaser
City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Goodlett Place
San Francisco, CA 94102-4685
E-mail howard.tevelson@sfgov.org

Please reference Contract Proposal No. 70886.

The Pre-bid Conference will begin at the time specified, and company representatives are urged to arrive on time. Topics already covered will not be repeated for the benefit of late arrivals. Failure to attend the Pre-bid Conference shall not excuse the successful bidder from any obligations of the contract. Written Bid Addendum will execute any change or addition to the requirements contained in this Contract Proposal, as a result of the Pre-bid Conference. **It is the responsibility of the bidder to check for any Bid Addendum and any other items posted, that will be posted on this Contract Proposal's Event page in the Supplier Portal.** The Event Number is

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Note that every Addendum will create a new version of the Event. Bidders should monitor the event for new versions. If there is a new version that means something has been changed or added in the event. If addenda are issued, a signed receipt must be acknowledged by the bidder by including them as part of the bid submission to ensure that all requirements are included in the proposal. Failure to include all addenda may result in your proposal not being considered. The City will assume no responsibility for oral instructions or suggestions.

If the City issues an Addendum after Bidder has submitted their bid, but prior to the Event end date, Bidder must retract their Bid, and resubmit their bid along with the newly issued Addendum.
Supplier Portal:

https://sfsupplierportal.sfgov.org/psp/supplier/SUPPLIER/ERP/h/?tab=DEFAULT

70. Specifications The fuel delivered must be at least 99% Renewable Diesel and meet the latest versions of the following standards:

A. ASTM - D975: Defines diesel fuel used as a motor vehicle fuel.

B. ASTM - D6866: This test utilizes Carbon 14 dating to verify the percentage of bio-based of a fuel and petroleum.

C. Carbon Intensity (CI) #: Only fuels with approved CI pathways that achieve a 60% or greater GHG reduction compared to conventional diesel will be accepted. The CI is a method of quantifying the overall carbon impact of a fuel as defined by the California Air Resources Board Low Carbon Fuel Standard (LCFS). It is the supplier's responsibility to provide documentation acceptable to the City.

D. Must meet the definition as described in the California Air Resources Board Alternative Diesel Fuel regulations and California diesel fuel regulations under Title 13, California Code of Regulations, Sections 2281-2285.

71. Bidder's/Contractors Qualifications and Requirements

I Minimum Qualifications.

MQ1. In order to receive consideration, Bidder/Contractor must have in-depth technical knowledge and three (3) years of experience within the last six (6) years in the delivery of fuel products such as gasoline, diesel or similar. A letter on company's letterhead should be sent in with the bid. If not sent with the bid it **must** be sent in within three (3) days of the request of the letter.

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MQ2. In order to receive consideration the bidder should send in with their bid the three (3) required references. There is a reference form that can be found as part of the "**Required Information of All Bidders**". **If not sent in with their bid they must submit that information within three (3) business days upon request by the City.**

II. **Additional Bidder's Qualifications and Requirements.**

A. Contractor shall have and maintain, throughout the contract term, and any extension thereof, stocking levels of all products, covered by this contract, to ensure proper on time deliveries to the City's departments. Failure to maintain adequate stock may result in the Purchaser invoking the Contractor's Default clause (General Condition No. 48) of the contract. The levels stocked should be able to handle any emergency situation that arises.

B. Contractor shall be responsible for providing technical support and assistance to the City through Contractor's own personnel, equipment and facilities as well as through manufacturer's technical representatives. As part of this technical support and assistance, the Contractor shall provide personnel with in-depth technical knowledge of the products the Contractor is providing under this contract, to answer questions and offer any assistance required by City personnel, during City business hours (7:00 A.M. – 5:00 P.M.).

C. The City may require Contractor to provide, within seven (7) working business days, from the date they are requested to do so information and documentation requested by Purchaser, including but not limited to: sources of supply, distribution, dealership or agency agreements and authorizations from manufacturer(s) they claim to represent, lines of credit with financial institutions for manufacturer(s) they claim to represent, lines of credit with financial institutions and suppliers, numbers of employees, trade references and any other information to determine the Contractor's fitness to supply the contract requirements.

D. The City reserves the right to reject any bid on which information submitted by Bidder fails to satisfy the City and/or Bidder is unable to supply information and documentation within the period of time requested. Any false statements made by a bidder in their submitted bid or any related communication/clarification may result in the disqualification of their bid from receiving further evaluation and contract award.

E. The City reserves the right to inspect Contractor's place of business, including Contractor's existing stock prior to award or during the contract term, to aid Purchaser in determining Contractor's ability to satisfy the terms and conditions of the contract

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F. Contractor must maintain normal business hours of at least 7:00 A.M. to 5:00 P.M., Monday through Friday throughout the term of the contract, and be open at all times during that period

G. Contractor must be capable of producing usage reports required under General Condition No. 51 of this contract.

72. City Department's Responsibilities

A. Maintain adequate stock of most commonly used items to minimize emergency orders whenever possible and as applicable to the department's operations.

B. Monitor and document Contractor's performance and furnish Purchaser copies of records, correspondence and all other documentation relevant to Contractor' performance.

C. Inspect material received from Contractor immediately upon delivery and reject or return damaged or incorrect material for replacement at no extra charge or credit.

D. Establish quality control measures, as applicable to department's operations, and provide documented reports to Purchaser and Contractor of any product defects or premature failures.

E. Provide Purchasing with documentation of unsatisfactory performance of the Contractor and receive authorization from Purchasing to place orders with another Contractor.

73. Delivery

Contractor must comply with the following delivery requirements. Failure to comply with any or all requirements may result in Purchasing invoking General Condition 48, Contractor's Default Clause.

A. Deliveries shall include all associated delivery/freight charges, F.O.B point of destination.

B. The Contractor shall provide all the following documentation for each calendar quarter on or before the 5th working day of the month following that quarter.
All documentation shall be in a format approved in advance by the City.

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1. Product Transfer Documents (PTD) means a document that authenticates the transfer of ownership of fuel from a fuel reporting entity to the recipient of that fuel. A PTD is created by a fuel reporting entity to contain information collectively supplied by other fuel transaction document, may include, but not limit to, bills of lading (with affidavit), invoices, contracts, meter tickets, rail inventory sheets, Renewable Fuels Standards (RFS) product transfer documents, etc.

2. This requirement shall apply to all successor documents as approved by CARB. Note: There may be a new document approved by January 01, 2019.

3. The percentages of deliveries from each Pathway the vendor expects to utilize in the following quarter.

4. The percentages will be based on estimated fuel deliveries provided by the City.

C. Contractor shall provide written notice to the City no less than three (3) business days prior to delivery whenever there is a change in the Renewable Diesel Pathway as defined in this section. Any delivery made without prior scheduling will be rejected by the City, at no additional cost.

D. All deliveries shall be made and accepted at the City locations indicated by the ordering department between the hours agreed upon by the ordering departments and the contractor.

E. The vendor will provide, at its expense, an annual audit of Renewable Diesel deliveries to the City. This audit shall be performed by a 3rd party mutually agreed to by the City and vendor.

F. The City reserves the right to independently verify delivery volumes and Carbon Intensity vales of fuel deliveries with the vendors fuel producer. The vendor will provide producers contact information when requested by the City.

G Establish quality control measures, as applicable to department's operations, and provide documented reports to Purchaser and Contractor of any product defects or premature failures.

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H..No substitutions will be allowed unless agreed to in advance by the City's departments.

I.Emergency deliveries shall be delivered by best means possible, at no additional cost to the City. Contractor shall notify the department of the estimated time of delivery.

J.All deliveries must include a packing slip and must provide the following information:

- Complete description including manufacturer's name and part number
- Quantity ordered
- Contract number and contract item numbers
- Back-ordered items and amount back-ordered
- Date back-ordered items will be delivered

K.Contractor making deliveries to locations over Marine Waters (See Attachment A for locations) must comply with the following:

(1) California Department of Fish and Game, Office of Oil Spill prevention, must be notified no less than four (4) hours and no more than twelve (12) hours prior to any fuel transfer over Marine Waters.

(2) Contractor must have valid California State Department of Fish and Game Certificate of Financial Responsibility.

(3) Contractor must have an approved "Oil Spill Contingency Plan" filed with the Office of Oil Spill Prevention of the California Department of Fish and Game.

(4) Contractor must have an "Oil Spill Response Organization" under contract or proof of ownership in enough equipment to contain and clean-up entire contents of tank truck.

(5) Contractor must be in compliance with the oil transfer regulations of the California
Department of Fish and Game (OSPR).

(6) Contractor must provide a 150 foot flexible hose to make deliveries to the two Fire
Boats docked at Pier 22 ½.

l. Contractor shall make deliveries as required by various City departments to the locations listed in this document, in the quantities and frequencies individually requested and within the time required, so as not to interrupt City services and

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operations. The City has many delivery locations. Contractor must be able to deliver to all the locations within the Aggregate bid upon that are listed in this document. Additional locations may be added during the term of the contract.

Any failure to deliver the fuels as requested will be subject to General Condition 17, Failure to Deliver. If Contractor fails to deliver Renewable Diesel in the manner or within the time frame called for by this contract. Or as requested by the City department. The City may purchase the fuel from its secondary vendor or from another source on the open market, if there is no secondary award made and if the City has to pay a greater price, the excess price will be charged to and collected from the Contractor. **The City will only purchase from the secondary supplier when the primary supplier can not deliver Renewable Diesel.**

M. Deliveries to be made by tank truck (The words "tank truck" as used herein shall be understood to mean a tractor trailer unit with trailer-mounted metal tank suitably constructed to contain the fuels as described above). The tank truck shall be labeled and constructed to meet all the requirements of the California State Highway Patrol, the Interstate Commerce Commission and any and all federal, state and local jurisdictions having control over said tank truck operation.

Designated tank trucks will be mandated for only the purpose of Renewable Diesel to assure quality control. The vendor shall provide the City with documentation certifying that the Renewable Diesel tank truck satisfies the requirements of this paragraph.

N Delivery requirement for SFMTA:

(1) The San Francisco Municipal Transportation Agency (SFMTA) operates about 600 diesel coaches. To serve the public's transportation needs, SFMTA requires that adequate supplies of Renewable Diesel fuel be on hand at all times. The Contractor shall schedule deliveries of Renewable Diesel fuel under a **"keep full"** plan which will maintain fuel tank levels at all SFMTA delivery locations at between **three-quarters (75%) full and (90%) full.** This requirement will normally require deliveries to SFMTA locations seven (7) days a week, and may require more than one delivery per day to a specific delivery point when actual usage exceeds the average.

(2) SFMTA uses the "Mytankgauge or other remote monitoring system as approved by the City" system to measure the fill status of its tanks. "Mytankgauge or other remote monitoring system as approved by the City" is a web based program that will be made available to the

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winning bidder. Vendor shall use Mytankgauge or other remote monitoring system as approved by the City to manage the SFMTA account to ensure that SFMTA tanks are kept full as described above. Vendor shall ensure that all delivery staff are trained in the use of Mytankguage. Vendor's delivery staff shall measure the fill status of each tank before making any delivery and upon completing any delivery.

(3) Vendor shall immediately suspend any delivery creating an alarm condition at any SFMTA facility. Any delivery resulting in a tank exceeding 90 % capacity shall be considered an overfill.

(4) Regarding Renewable Diesel, SFMTA and other City departments expect vendors to deliver the proper fuel, but acknowledge that a vendor may not always be able to source a sufficient supply of Renewable Diesel to meet the "keep full" levels required above. In such a circumstance, the vendor shall provide written notice to the SFMTA or other City department no less than 3 business days prior to delivery. SFMTA and the other City departments reserve the right to either satisfy the "keep full" requirement by accepting a delivery of CARB #2 Ultra-Low Sulfur fuel meeting the specifications set forth in Section 70 or by having Renewable Diesel delivered by the secondary fuel vendor. Please note that the "keep full" is an SFMTA term but all city departments retain the option to accept Carb#2 Ultra-Low Sulfur or use the secondary fuel vendor after advanced written notification that the proper fuel is not available.

(5) When making deliveries of Renewable Diesel fuel under this contract, the Contractor shall use equipment which complies will all applicable Federal, State and local governmental regulations.

(6) Vendor shall be responsible for all City costs arising from any spill of fuel resulting from a fuel delivery under this contract. .

Each delivery must be accompanied by a Loading Ticket ("rack tag") or similar document showing the quantity of fuel.

Each delivery of Renewable Diesel from new feedstock, carbon intensity value or production sources shall include a labeled, representative sample of pure Renewable Diesel for SFMTA retention. Vendor shall provide the City agency receiving the Renewable Diesel with a sample (1000 ml) of the neat (pure) Renewable Diesel for each truck load delivered. Renewable Diesel may be subject to routine testing for confirming concentrations and for compliance with specifications. This will assist the City in identifying the source of a fuel quality problem should one arise.

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SPECIAL CONDITIONS

O. Refer to Attachment A for delivery locations, size of tanks and approximate average deliveries.

P. **Material Safety Data Sheets**. Any City, State, or Federal requirement for Hazardous Substance must be strictly adhered to.

1. Successful bidder must furnish completed Material Safety Data Sheets (MSDS) within ten days of notification to do so, for any product supplied on the Contract that contains or is considered to be a hazardous substance. Failure to furnish a completed MSDS for each item required may result in rejection of the bid.

2. Contractor shall provide to the City, current updated MSDSs for required products under this agreement. MSDSs are subject to approval by the San Francisco Department of Public Health, Environmental Service Health as to form and content

74. Price.

A. Bid prices, mark up (plus) or down (minus) are to be firm for the term from award date through the end of the contract term as well as for any and all option year extensions.

B. Prices used for this contract will be based on the daily average rack prices, with CAR of the Oil Price Information Service (OPIS), for Diesel Fuel, for San Francisco or Stockton, based on locations of delivery. The prices for Aggregates I through V will be based on the daily average rack in San Francisco, for Diesel. Aggregate VI will be based on the daily average rack prices for Stockton for Diesel.

C. Prices that will be used also will be based on the published OPIS closing prices at 5:30pm-6:00 pm EST / 2:30 pm- 3:00 pm PST for the previous day. Example Monday's published closing prices will be used for the basis of Tuesday's deliveries, Friday's published prices will be used for deliveries for Saturday, Sunday and Monday, unless there is a published weekend price.

D. **PLEASE NOTE: For the Sierra locations, Aggregate VI, all bidders must include in their mark up or down any and all considerations for the distance of the locations and the amounts of fuel that will be delivered at those locations. There will not be any additional add on to the prices bid.**

E. Only prices that appear on City Contract Proposal Bid Sheets will be considered.

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SPECIAL CONDITIONS

F. In the event that the OPIS pricing ceases to be published, or is materially changed, either party may request a new basis to determine pricing for this contract. If a mutual agreement cannot be reached within a reasonable time, but no longer than thirty (30) days, this contract can be terminated with no prejudice against either party. In the event that an OPIS San Francisco or a Stockton CA. Renewable Diesel rack is published after this bid and or award, the City may choose to adopt that index at its sole discretion.

G. In addition to the prices invoiced as based on the applicable OPIS daily rack prices plus or minus the vendors mark up or down, all taxes that are authorized by law and that can be documented may be added to the invoice.

H. Bid prices will be inclusive of all costs to the City, including delivery/freight charges, F.O.B. point of destination. Bid prices shall be exclusive of any Federal, State, local sales, use tax and the required mandated environmental fees. If there is a discrepancy between the Bid Sheet and the People Soft Line Items, the Bid Sheet pricing will prevail. In the event of a discrepancy between the unit price and the extended price, the unit price will prevail.

75. Price Adjustment (Not Used)

76. Bid Evaluation. The bid evaluation will be based on the mark up or mark down of OPIS pricing, therefore bidders must enter their **firm fixed mark up or mark down only**. Bid prices **SHOULD NOT** include the OPIS daily average prices for either San Francisco or Stockton CA.

Bid prices will be evaluated for all Aggregates based on the estimated quantity times the bid price, mark up or mark down , per specified unit, less applicable discount payment terms offered (see Bid and Contract Condition 12), and sales tax adjustment (see Special Condition 76). NOTE: Although there are six aggregates based on locations and quantities, this bid opportunity will be awarded as one total award, with a possible secondary award.

Separate bid evaluations will be done on both the primary and secondary categories. The awardee of the primary award cannot be awarded the secondary award.

Purchasing will attempt to evaluate this ("bid package" or "contract proposal" package) within thirty (30) days after receipt of bids(s). If Purchasing requires additional evaluation time, all bidders will be notified in writing of the new expected award date. If there is a discrepancy between the Bid Sheet and the People Soft Line Items, the Bid Sheet pricing will prevail. In the event of a discrepancy between the unit price and the extended price, the unit price will prevail.

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SPECIAL CONDITIONS

77. Adjustment of Bid Price for Sales Tax. In accordance with Administrative Code Chapter 21.32, for bid purposes, Purchasing will reduce your bid based on any sales tax revenue the City would receive from this purchase.

78. Award. Award will be made to the lowest priced, most responsive and responsible bidder by in the Aggregate as noted on the bid sheets. Bidder must bid on all items within each Aggregate to be responsive for that Aggregate. Failure to do so will result in a rejected bid.

The City intends to award a primary supplier as well as a secondary supplier. Bidders are requested to bid on both the primary and secondary categories for all aggregates. The secondary supplier will only be used if the primary supplier can not deliver Renewable Diesel as requested.

In determining the award, Purchasing will take into consideration, but will not be limited to:

- Price (evaluated)
- Satisfactory review of bidders' qualifications.
- Any other factors deemed pertinent

79. Awarded Items. If during the term of the contract, a contract item is determined to be unacceptable for a particular use, and such is documented by a City Department and as determined by Purchasing, it is understood and agreed that the item will be canceled and removed from the contract without penalty to the City. The City's sole obligation to the supplier is payment of deliveries made prior to the cancellation date. City shall give the supplier ten days' notice prior to any cancellation. The City will purchase the required replacement item from any source and in the manner as determined by Purchasing. If a contracted item has been discontinued by the manufacturer or is deemed temporarily unavailable, it will be the responsibility of the Contractor to search the marketplace and find an acceptable equal substitute in the time required for delivery and at the contract price. Contractor must notify Purchasing by certified mail, 30 days in advance of any changes in the description of article, brand, product code or packaging. Any changes made without the approval of Purchasing will constitute default and result in the City invoking General Condition No. 19.

80. Ordering. Items to be furnished under this contract shall be ordered through a release from the appropriate citywide contract by City departments during the effective period of the contract. All invoices for payments shall show the citywide contract number, complete description of item, quantity and contract price.

81. Payment. The City agrees to pay for all products in accordance with the prices quoted in the successful bid and subject to any applicable discount provisions contained in said bid. Payments shall be made by the City to Contractor in arrears, for **completed orders**, throughout

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SPECIAL CONDITIONS

the term of the contract. Invoices submitted by the Contractor must be in a form acceptable to Purchasing and Controller. All amounts paid by the City to the Contractor shall be subject to the audit by the City.

82. Additional Items. If, in the satisfaction of governmental interests it is necessary to purchase additional items from Contractor, additional items may be added to this contract by mutual agreement of the parties. The aggregated cost of all additional items added to the contract, during the contract term, shall not exceed twenty percent (20%) of the total estimated value (cost) of the original contract. All requests to add additional items to the contract must be submitted by City Departments in writing to the Purchasing Division. All requests must include complete specifications, estimated quantities for the remainder of the contract period and a price quotation provided by the contractor, for each service. All additional items or services added to the contract shall be approved through issuance of a contract modification. In the event the aggregated cost of the contract increases by more than 20% of the total estimated value of the original contract, or the increase totals more than the Minimum Competitive Amount, the amount over 20% or the Minimum Competitive Amount, shall be bid in accordance with Standard Purchasing Procedures. The resulting bid award shall be added to the contract through a contract modification (same Contractor) or the issuance of a new contract (new Contractor) and include Contractor's name and information, complete service description, delivery information and pricing information.

83. Environment Code Chapter 5, Resource Conservation Ordinance. (Not Used)

84. Bid Security (Not Used)

85. Performance Bond (Not Used)

86. Fidelity Bond (Not Used)

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

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

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

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SPECIAL CONDITIONS

(2) Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence, $2,000,000 aggregate for bodily injury, property damage, contractual liability, personal injury, products and completed operations.

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

(4) Pollution Liability Insurance with limits not less than $5,000,000 each occurrence, and CA 9948, Broaden Pollution Coverage Endorsement. This coverage shall be endorsed to include Non-Owned Disposal Site coverage;

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

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

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

C. Contractor shall provide thirty (30) days' advance written notice to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to:

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

D. Contractor hereby agrees to waive Workers' Compensation subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

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SPECIAL CONDITIONS

E. 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.

F. 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.

G. 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.

H. Before commencing any operations under this Agreement, 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. Failure to maintain insurance shall constitute a material breach of this Agreement.

I. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

J. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insured.

88. Failure to Execute Contract – Within ten business days of the receipt of a notice of award, the bidder to whom the contract is awarded shall deliver the required bond documents and/or specified insurance certificates to City. If the bidder fails or refuses to furnish the required bond and/or insurance within ten days after receiving notice from Purchasing, Purchasing may, at its option, determine that this bidder has abandoned its bid. Thereupon the tentative award of said contract to this bidder shall be canceled and City shall notify the bidder's surety and collect on the bidder's bond (or the check accompanying its bid shall be deposited with the Treasurer of the City and County of San Francisco for collection) and the proceeds thereof shall be retained by City as partial liquidated damages for failure of such bidder to properly file the bonds and insurance herein required. The foregoing in no way limits the

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SPECIAL CONDITIONS

damages which are recoverable by City whether or not defined elsewhere in the contract documents.

89. Sweatfree Procurement – *(Not Used)*

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

91. Questions. Any questions, objections, or clarifications concerning the scope of services/specifications or requirements in this bid proposal must be submitted in writing, and emailed to howard.tevelson@sfgov.org and received no later than Thursday the 27th of December 2018 **by 2 p.m. PST** (Pacific Standard Time). by OCA All Bidder questions concerning the bid process shall be submitted no later than 48 hours prior to the bid deadline. Bidders who fail to do so will waive all further rights to protest, based on these specifications and conditions.

92. Bid Submittal Instructions. Bids **must** be, submitted before the due time, or electronically uploaded into the City's PeopleSoft bidding portal https://sfsupplierportal.sfgov.org/psp/supplier/SUPPLIER/ERP/h/?tab=DEFAULT . Bids transmitted by fax or any type of electronic mail will not be accepted.

Bids must be submitted electronically in the City's PeopleSoft system. Postmarks will not be considered in judging the timeliness of submissions. Bids transmitted by fax, in person, or any type of electronic mail will not be accepted.

This bid opportunity has Event ID No. 0000001449 OCA TC 70886 TITLE; Renewable diesel

A. All documents required, including the excel bid sheet should be sent in on a USB drive to the following:.
Envelopes must be clearly marked:
City and County of San Francisco
Office of Contract Administration
1 Dr. Carlton B. Goodlett Place
City Hall, Room 430
San Francisco, CA 94102
Reference: Event ID No. 0000001449 OCA TC 70886 TITLE; Renewable Diesel
Attention: Howard Teveslon,Senior Purchaser

B. Upload all required Bid documents via the Supplier Portal:
I. Page 1 of the Contract Proposal completed and signed.

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CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CONTRACT ADMINISTRATION
PURCHASING DIVISION

70886

Renewable Diesel
For the Term June 01, 2019 through March 31, 2022

SPECIAL CONDITIONS

II. Response to Contract Proposal General Condition 39 "Cooperative Agreement."

III. Response to Contract Proposal General Condition 57 "Contractors Unable to do Business with the City."

IV. "Bid Sheets" Attachment **must be kept in excel format**

V. All questionnaires and forms, completed and signed, including signed bid addenda or if applicable.

VI. Three (3) verifiable references

VII. Bidder must bid on all items within each Aggregate to be responsive for that Aggregate. Failure to do so will result in a rejected bid

VIII. **Ensure you have entered the two total extended prices, one for the primary bid and one for the secondary bid into the People Soft bid sheets.**

In the event of a discrepancy between the unit price and the extended price, the unit price will prevail

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

FOR MORE INFORMATION, call:

Howard Tevelson, Senior Purchaser

(415) 554-6740
E mail howard.tevelson@sfgov.org

END OF SPECIAL CONDITIONS

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

Contract Modification1

Renewable Diesel-Primary Contractor

Golden Gate Petroleum
ATTN: Pat O'Keefe
1340 Arnold Drive Suit 231
Martinez, Ca 94553
E-mail: pat@ggpetroleum.com

Date: March 18, 2020
Buyer Name: Howard Tevelson
Term contract: 70886
Contract ID: 1000013324
Supplier ID: 0000019410
Type: Indefinite Quantity
Not-to-exceed amount: $ 45,000,000

The history of this contract and its modifications is as follows:

Modification	Start Date	End Date	Amount	Other Changes
Original contract	06-01-19	05-31-22	$ 45,000,000	
1	No Change	No Change	$ 45,000,000	Add information to cover San Francisco emergency

This Contract Modification 1 changes the contract as follows:

- Adds a requirement to furnish San Francisco Renewable Fuel in an emergency situation.
- Deletes General Condition 39, adds General Conditions 40 and 64, and updates General Conditions 57 and 61 (see page 2 and 3 of this modification).

All other terms and conditions remain the same.

Approved by the City:

for

Acting Director, Sailaja Kurella

Authorized Representative, Golden Gate Petroleum

The following is herby added to the contract:

In a San Francisco emergency, Golden Gate Petroleum will deliver Renewable Diesel with a truck within 4 to 6 hours during normal business hours and 6 to 8 hours after normal business hours, weekends and holidays. There will be no additional charged fees to the City for an emergency with truck and driver with fuel, portal to portal. The fee for the fuel will be based on a mark up or down of the OPIS price as stated in the contract. The fee for a truck and driver only to transfer location to location will be $350.00 per hour, portal to portal. For situations that require a truck and driver with fuel to be stationary, the fee will be $350,00 per hour, with a minimum of 24 hours, billed at 24-hour increments. If stationary, there will be two drivers working 12-hour shifts each. The price of the fuel will be based on a mark up or down of the OPIS price as stated in the contract.

The following terms are hereby modified:

1. **General Condition 39. Cooperative Agreement** is hereby deleted in its entirety.

2. **General Condition 40 Withholding** is hereby added as follows: Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations

3. **General Condition 57, Contractors Unable to do Business with the City** is hereby deleted and replaced with the following: Subject to certain exceptions, Proposers are hereby advised that this Contract is subject to the requirements of Administrative Code Chapter 12X, which prohibits the City from entering into a contract with a contractor that has its headquarters in a state that has enacted a law or laws that perpetuate discrimination against LGBT people and/or has enacted a law that prohibits abortion prior to the viability of the fetus, or a contractor that will perform any or all of the work on the contract in such a state. Chapter 12X requires the City Administrator to maintain a list of such states, defined as "Covered States" under Administrative Code Sections 12X.2 and 12X.12. The list of Covered States is available on the website of the City Administrator (https://sfgsa.org/chapter-12x-anti-lgbt-state-ban-list). Proposers will be required to certify compliance with Chapter 12X as part of its proposal, unless the City determines that a statutory exception applies.

4. **General Condition 61, Limitation on Contributions** is hereby deleted and replaced with the following: Through execution of this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of person services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign

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

5. **General Condition 64, Consideration of Salary History** is hereby added to this contract as follows: Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at https://sfgov.org/olse/consideration-salary-history. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

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

Contract Modification 2

Renewable Diesel Primary Contractor

Supplier:
Supplier Golden Gate Petroleum
1340 Arnold Drive Suite 231
Martinez, CA 94553
Supplier Cell Phone 925-890-6413
Supplier e-mail pat@ggpetroleum.com

Date: April 05, 2022
Buyer Name: Howard Tevelson
Term contract: TC70886
Contract ID: 1000013880
Supplier ID: 0000019410
Type: Indefinite Quantity
Not-to-exceed amount: **$68,000,000**

The history of this contract and its modifications is as follows:

Modification	Start date	End date	Amount	
Original contract	06/01/2019	05/31/2022	$ 45,000,000	
1	No Change	No Change	$ 45,000,000	Add information to cover San Francisco emergency
2	06/01/2019	05/31/2024	$ 68,000,000	Extend the term and Increases the NTE amount

This modification No. 2 changes the contract as follows:

1. Extends the term by two years to 05/31/2024 and add $ 23,000,000 to the not to amount amount/Increasing it to $ 68,000,000

All other terms and conditions remain the same.

DocuSign Envelope ID: 3A99A95F-340A-481E-A2B6-991663635598

CITY

Recommended by:

DocuSigned by:
Daniel Sanchez
36604DE85002453...

Daniel Sanchez
Principal Administrative Analyst
Office of Contract Administration

Approved:

DocuSigned by:
Sailaja Kurella
78EAEA4AB01C4E0...

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

Supplier Name: Golden Gate Petroleum

DocuSigned by:
Patrick Okeefe
E81EC16A9E58422...

Pat O'Keefe
Vice President
1340 Arnold Drive Suite 231
Martinez, CA 94553
City Supplier Number: 0000019410

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Incomplete - Pending Signature

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220, San Francisco, CA 94102
Phone: 415.252.3100 . Fax: 415.252.3112
ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 231154

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4
(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)
A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of $100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: https://sfethics.org/compliance/city-officers/contract-approval-city-officers

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (*for amendment only*)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	**EMAIL**
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Mark Farley	(628) 652-1608
FULL DEPARTMENT NAME	**DEPARTMENT CONTACT EMAIL**
GSA Office of Contract Administration	mark.farley@sfgov.org

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Incomplete - Pending Signature

5. CONTRACTOR	
NAME OF CONTRACTOR Golden Gate Petroleum	**TELEPHONE NUMBER** (925) 228-2222
STREET ADDRESS (including City, State and Zip Code) 1340 Arnold Drive, Suite 231, Martinez, CA 94553	**EMAIL** pat@ggpetroleum.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	**ORIGINAL BID/RFP NUMBER**	**FILE NUMBER (*If applicable*)** 231154
DESCRIPTION OF AMOUNT OF CONTRACT $86,750,000		
NATURE OF THE CONTRACT *(Please describe)* The purpose of this contract is to provide renewable diesel fuel for the City's buses, trucks, cars and equipment.		

7. COMMENTS
Requesting approval of a contract increase from the contract's Modification No.2 amount of $68,000,000 to $86,750,000 and extension of contract expiration date to October 31, 2024 for its Modification No. 3.

8. CONTRACT APPROVAL	
This contract was approved by:	
☐	**THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM**
☒	**A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES** Board of Supervisors
☐	**THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS**

DocuSign Envelope ID: 269E5FE7-CA59-4860-B6A9-7DDE90AAF220

Incomplete - Pending signature

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	O'Keefe	Dennis	CEO
2	O'Keefe	Patrick	Other Principal Officer
3	Kilbourn	Norma	CFO
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9. AFFILIATES AND SUBCONTRACTORS			
List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.			
#	**LAST NAME/ENTITY/SUBCONTRACTOR**	**FIRST NAME**	**TYPE**
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Incomplete - pending signature

9. AFFILIATES AND SUBCONTRACTORS			
List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.			
#	**LAST NAME/ENTITY/SUBCONTRACTOR**	**FIRST NAME**	**TYPE**
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☐	Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.		

10. VERIFICATION	
I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete. **I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**	
SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK BOS Clerk of the Board	**DATE SIGNED**

City and County of San Francisco
London N. Breed, Mayor

Office of the City Administrator
Carmen Chu, City Administrator
Sailaja Kurella, Director
Office of Contract Administration/Purchasing

DATE: November 2, 2023

TO: Angela Calvillo, Clerk of the Board

FROM: Sailaja Kurella, Director of Office of Contract Administration (OCA) and Purchaser

SUBJECT: **Resolution to approve amendment to Contract 1000013880 (Term Contract 70886) – Renewable Diesel with Golden Gate Petroleum**

The Office of Contract Administration respectfully requests approval of an amendment to Contract 1000013880 (OCA Term Contract 70886) with Golden Gate Petroleum, extending the contract duration by five months, to October 31, 2024 and increasing the contract not-to-exceed (NTE) amount by $18,750,000 for a total NTE amount of $86,750,000.

Pursuant to Administrative Code Section 21.1, OCA conducted a competitive solicitation in December 2018 for a Citywide as-needed term contract for the purchase of renewable diesel for all City departments. Golden Gate Petroleum was the lowest bidder for all aggregates (Aggregates 1-6 serving all departments and the PUC Sierras location), and was awarded the agreement as the Primary Contractor with an initial contract NTE amount of $45,000,000 and a duration of two (2) years and 10 months, from June 1, 2019 to March 31, 2022. The contract was amended two (2) times, once to update contract terms and conditions related to furnishing the City renewable diesel fuel in emergency situations, and once to extend the contract duration by two years and two months to May 31, 2024 and increase the NTE amount by $23,000,000, for a total NTE amount of $68,000,000. Pricing on the contract is based on a markup or markdown on the industry index, the OPIS daily rack rate, for a given diesel type, delivery location, and gallons ordered.

The proposed NTE amount for the amendment (Modification 3) is calculated based on average monthly usage over the life of the contract, of approximately $1.3 million. Note however, expenditures have increased over time as a result of the volatile market propelling increases in oil pricing the past several years. The current contract NTE balance is nearly depleted; as such, the proposed new NTE amount of $86,750,000 covers 12 months of usage, from November 2023 through October 2024, with a 20% contingency to cover fluctuations/increases in pricing as well as expected increased usage during the November 2023 APEC event.

This contract is critical for satisfying City departments' needs for essential fuel for the City's buses, trucks, cars and equipment. Approval of this resolution will allow City departments to continue procuring this critical commodity in a streamlined and cost-efficient manner.

If you have any questions or require additional information, please contact Elizabeth Bessman on my team at 628-652-1602.

Enclosures:
Contract 1000013880 (TC70886) Citywide Renewable Diesel-Primary Contractor Agreement
Contract 1000013880 (TC70886) Citywide Renewable Diesel-Primary Contractor – Modification 1
Contract 1000013880 (TC70886) Citywide Renewable Diesel-Primary Contractor – Modification 2
Contract 1000013880 (TC70886) Citywide Renewable Diesel-Primary Contractor – Modification 3
Resolution for Contract 1000013880 (TC70886)
S.F. Ethics Commission form 126f4, Notification of Contract Approval

From:	Moser, Lily (ADM)
To:	BOS Legislation, (BOS)
Cc:	Hayward, Sophie (ADM); Kurella, Sailaja (ADM); Somera, Alisa (BOS); Farley, Mark (ADM); Bessman, Elizabeth (ADM)
Subject:	Legislative Introduction: Approval of Golden Gate Petroleum Contract 1000012394 Amendment
Date:	Monday, November 6, 2023 10:49:56 AM
Attachments:	Contract 1000013880-TC70886_Agreement.pdf Contract 1000013880-TC70886 Modification 1.pdf Contract 1000013880-TC70886_Modification 2.pdf Contract 1000013880-TC70886_Form 126f4.pdf Contract 1000013880-TC70886_Renewable Diesel_Resolution.doc Contract 1000013880-TC70886_Renewable Diesel_Resolution Memo..pdf Contract 1000013880-TC70886 Modification 3.doc

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Good Morning Clerk of the Board,

Please find attached a resolution authorizing the Office of Contract Administration ("OCA") to grant approval of an amendment to Contract 1000013380 (Term Contract 70886) Golden Gate Petroleum, for the provision of renewable diesel fuel. The proposed amendment increases the contract amount by $18,750,000, for a total not-to-exceed (NTE) amount of $86,750,000, and extends the duration by five months, to October 31, 2024.

Please see the attached package which includes:

Enclosures:

1. Contract 1000012394/TC70886 Renewable Diesel Agreement
2. Contract 1000012394/TC70886 Renewable Diesel Agreement – Modification 1
3. Contract 1000012394/TC70886 Renewable Diesel Agreement – Modification 2
4. Contract 1000012394/TC70886 Renewable Diesel Agreement – Draft Modification 3
5. Resolution for Modification 3 to Contract 1000012394 (TC 70886)
6. S.F. Ethics Commission form 126f4, Notification of Contract Approval
7. BoS Resolution Memo

I wanted to inquire as to whether this legislation would be accepted and introduced on 11/14. If you have any questions regarding this submittal, please contact Mark Farley at (628) 562-1608.

Thanks for all your help!!

Best,
Lily Moser

Lily Moser | she/her
Communications and Legislative Analyst
Office of the City Administrator
City and County of San Francisco
City Hall, Room 362