File No. 250250 **Committee Item No.** 13
Board Item No. 15

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee **Date** April 23 2025
Board of Supervisors Meeting **Date** April 29, 2025

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Completed by: Brent Jalipa **Date** April 17, 2025
Completed by: Brent Jalipa **Date** April 24, 2025

[Agreement - Circosta Iron and Metal Co. Inc. - Sale of City-owned Scrap Metal for Pick-Up and Disposal - $1,069,575 Anticipated Revenue]

Resolution authorizing the Office of Contract Administration ("OCA") to execute Contract 1000035528 between the City and County of San Francisco and Circosta Iron and Metal Co. Inc. for the as-needed sale of City-owned scrap metal for pick-up and disposal, for a term of five years from June 1, 2025, through May 31, 2030, for an estimated revenue amount of $1,069,575.

WHEREAS, Charter, Section 9.118(a), requires agreements where anticipated revenues exceed $1,000,000 and subsequent modifications of such agreements to be approved by the Board of Supervisors; and

WHEREAS, City expects to receive revenues of approximately $1,069,575 for the Sale of City-owned Scrap Metal for Pick-Up and Disposal over a five year period commencing on June 1, 2025, through May 31, 2030; and

WHEREAS, The proposed Contract 1000035528 with Circosta Iron and Metal Co. Inc. was competitively procured through an Invitation for Bids ("IFB") issued by OCA on February 7, 2025, under Sourcing Event 0000009150, as a result of which Circosta Iron and Metal Co. Inc. was deemed the lowest responsive bidder for the as-needed Sale of City-owned Scrap Metal for Pick-Up and Disposal; and

WHEREAS, The agreement referenced above is on file with the Clerk of the Board of Supervisors in File No. 250250, 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(a), hereby authorizes OCA to execute Contract 1000035528 between the City and County of San Francisco and Circosta Iron and Metal Co. Inc. for the Sale of City-owned Scrap Metal for

Pick-Up and Disposal, with anticipated revenues of approximately $1,069,575 and a term of five years, commencing on June 1, 2025, through May 31, 2030; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes OCA to enter into any amendments or modifications to the Agreement that OCA determines, in consultation with the City Attorney, are necessary to correct clerical and/or administrative errors, as long as those changes are consistent with this Resolution; and be it

FURTHER RESOLVED, That within thirty (30) days of the Agreement being fully executed by all parties, OCA shall submit to the Clerk of the Board of Supervisors a completely executed copy for inclusion in File No. 250250; this requirement and obligation resides with the Department, and is for purposes of having a complete file only, and in no manner affects the validity of approved Agreement.

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

Agreement between the City and County of San Francisco and Circosta Iron and Metal Co. Inc. TC76617 1000035528

This Agreement is made this **1st** day of **June 2025,** in the City and County of San Francisco ("City"), State of California, by and between **Circosta Iron and Metal Co. Inc.** ("Contractor") and City.

Recitals

WHEREAS, the Office of Contract Administration ("Department") wishes to enter into an Agreement with Contractor whereby Contractor will purchase from City Scrap Metal produced and provided by City from Contractor; and

WHEREAS, Contractor represents and warrants that it is qualified to purchase Scrap Metal produced and provided by City as set forth under this Agreement; and

WHEREAS, Contractor was competitively selected pursuant to an Invitation for Bids ("IFB") entitled *Purchase of Scrap Metal from City and County of San Francisco* issued through Sourcing Event ID 0000009150; and

WHEREAS, the Department has filed Ethics Form 126f2 (Notice of Submission of Proposal) because this Agreement has a value of $100,000 or more in a fiscal year and will require the approval of the Board of Supervisors; and

WHEREAS, the Department has filed Ethics Form 126f4 (Notification of Contract Approval) because this Agreement has a value of $100,000 or more in a fiscal year and will require the approval of the Board of Supervisors; and

WHEREAS, the City's Board of Supervisors approved this Agreement by [insert resolution number] on [insert Board action date] in the amount of [insert Dollar Amount] for the period commencing June 1, 2025, and ending May 31, 2030; and

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

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

1.2 "Asset" means any metal items purchased by Contractor from City.

1.3 "Asset Pick-Up & Delivery Form" means the form completed by Contractor and signed by the ordering City department when requesting pick-up or receipt from City of City's Assets. A copy of the Asset Pick-Up & Delivery Form is attached as Appendix C. Copies of the Asset Pick-Up & Delivery Forms collected for the applicable month must be included in the Monthly Pick-Up Summary Form (Appendix D).

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

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

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

1.7 "Confidential Information" means confidential City information including, but not limited to, personal identifiable information ("PII"), protected health information ("PHI"), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M ("Chapter 12M"). Confidential Information includes, without limitation, City Data.

1.8 "Contractor" means Circosta Iron and Metal Co. Inc. 1801 Evans Ave. San Francisco, CA 94124.

1.9 "Deductions" means a reduction in the Purchase Price to be paid to City by Contractor for certain allowable expenses as identified in Appendix B.

1.10 "Deliverables" means Contractor's or its subcontractors' work product, including any partially-completed work product and related materials, resulting from the Services provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.

1.11 "Fee" means the fee due to City by Contractor for the purchase of City's Assets.

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

1.13 "Monthly Pick-Up Summary Form" means the form used by Contractor to summarizes all Assets picked up for the applicable month and payments due to City for the purchase of those Assets by Contractor. The Monthly Pick-Up Summary Form is attached as Appendix D and must be submitted to City with copies of (1) all Asset Pick-Up & Delivery Forms (Appendix C) collected for the applicable month, (2) applicable AMM price sheets (as

published on the 1st Monday of the month) for each metal picked up, and (3) original Weight Certificate for each pick-up.

1.14 "Party" and "Parties" means the City and Contractor either individually or collectively.

1.15 "Purchase Price" means the Fee paid to City by Contractor for the purchase of City's Assets. The Purchase Price for each type of Asset is set forth in Appendix B.

1.16 "Revenue" shall mean the total value of the proceeds payable to City by Contractor after deducting any fees or commissions, if any.

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

Article 2 Term of the Agreement

2.1 **Term.** The term of this Agreement shall commence on June 1, 2025, and expire on May 31, 2030, unless earlier terminated as otherwise provided herein.

2.2 **Reserved.**

2.3 **Reserved.**

Article 3 Financial Matters

3.1 **Certification of Funds; Budget and Fiscal Provisions.**

3.1.1 **Termination in the Event of Non-Appropriation**. This Agreement is subject to the budget and fiscal provisions of Section 3.105 of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

3.2 **Authorization to Commence Work**. Contractor shall not commence any work under this Agreement until City has issued formal written authorization to proceed, such as a purchase order, task order or notice to proceed. Such authorization may be for a partial or full scope of work.

3.3 **Compensation.**

3.3.1 **Calculation of Charges.**

City shall be entitled to a Fee for the purchase of City's Assets. Contractor's Fee shall be paid in accordance with the Purchase Price, less any permissible deductions, as set forth in Appendix B.

3.3.2 **Deductions from Purchase Price Limited to Satisfactory Services.** Contractor is not entitled to deduct any monies from the Purchase Price until City approves the Services completed. Deduction of any monies from the Purchase Price by Contractor shall not excuse Contractor from its obligation to replace the unsatisfactory Services even if the unsatisfactory character was apparent or could have been detected at the time such deductions were made.

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

3.3.4 **Reserved.**

3.3.5 **Reserved.**

3.3.6 **Getting paid by City for Services.**

(a) City utilizes a commercial product through its banking partner to pay City contractors electronically. If applicable, Contractor shall sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit SF City Partner at sfgov.org.

(b) At the option of City, and if applicable, Contractor may be required to submit invoices directly in the City's financial and procurement system. Refer to https://sfcitypartner.sfgov.org/pages/training.aspx for more information.

3.3.7 **Reserved.**

3.3.8 **Payment Terms.**

(a) **Payment due by Contractor to City.** Unless requested otherwise by City, Contractor shall submit payments to City using a check made out to the City and County of San Francisco. Payment shall be sent to the contract information provided by City to Contractor for the sale of an Asset.

(b) **Payment Due Date**: City shall be entitled to Revenues from the sale of an Asset no more than thirty (30) business days after the Asset has been (i) picked up by Contractor from City or (ii) where applicable, delivered by City to Contractor.. Payments not received by the City within thirty (30) calendar days after such amount becomes due shall bear interest at 5% from and after the date said payment was due until the date paid.

(c) **Reserved.**

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

3.5 **Submitting False Claims**. The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section.

3.6 **Reserved.**

3.7 **Reserved.**

Article 4 Services

4.1 **Reserved.**

4.2 **Term Agreement – Indefinite Quantities.** This is a term, indefinite quantities Agreement to supply the Services identified in this Agreement. Unless otherwise specified herein, Services will be required in quantities and at times as ordered during the period of the Agreement. Estimated Services are approximate only. City, in its sole discretion, may sell any greater or lesser quantity. Purchasing may also make sales to other suppliers when Purchasing determines, in its sole discretion, that the City has an immediate need for the Services or that it is not practical to sell the Assets under this Agreement. **City will not honor minimum purchase quantities for Assets under this Agreement.**

4.3 **Qualified Personnel**. Contractor represents and warrants that it is qualified to perform the Services required by City, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit sufficient resources for timely completion within the project schedule.

4.4 **Services.**

4.4.1 **Awarded Services.** Contractor agrees to perform the Services stated in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request and City is not required to compensate for Services beyond those stated. If, during the term of the Agreement, a contract service is determined to be unacceptable for a particular department, and such is documented by Purchasing, Contractor agrees that the service will be canceled and removed from the Agreement without penalty to City. City's sole obligation to Contractor is payment for Services performed prior to the cancellation date. City shall give Contractor ten (10) days' notice prior to any cancellation. City will contract for the required

service from any source and in the manner as determined by Purchasing. Contractor must notify Purchasing in writing, which can include email, certified mail, or other trackable mail, thirty (30) days in advance of any changes in the Services required in the Agreement. Any changes made without the approval of Purchasing will constitute a Default.

4.4.2 **Reserved.**

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

(a) **Independent Contractor**. For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required under this Agreement. Contractor, and its agents and employees, will not represent or hold themselves out to be employees of City at any time. Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by the City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor is liable for its acts and omissions. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing Services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any of its agents or employees. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this Section. Should City determine that Contractor is not performing in accordance with the requirements of this Section, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

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

officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this Section.

(c) **Reserved.**

4.5 **Reserved.**

4.6 **Assignment.** The Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.7 **Reserved.**

4.8 **Reserved.**

4.9 **Reserved**

4.10 **Reserved**.

4.11 **Annual Usage Reports by Contractor.**

4.11.1 Annually no later than February 15 and upon request, Contractor shall prepare and submit to City an electronic report in Microsoft Excel or CSV format identifying the Services rendered under this Agreement ("Usage Report").

4.11.2 The Usage Report must detail all Services performed by Contractor as of the Contract start date through December of the calendar year directly preceding the date of the report.

4.11.3 The Usage Report shall include, at a minimum, the data identified in Appendix A, Scope of Work, under "Record Keeping.".

4.11.4 Upon request, Contractor must also furnish a separate Usage Report for Services delivered to City which are not part of this Agreement.

4.11.5 Contractor shall email is Usage Reports to OCAVendor.Reports@sfgov.org.

4.11.6 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 Agreement number and "Annual Supplier Reporting" clearly marked on the envelope/packaging. Contractor shall mail the reports to:

OCA Supplier Reporting
Re: Term Contract No. TC76617
City and County of San Francisco
Office of Contract Administration – Purchasing
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

4.11.7 City reserves the right to terminate this Agreement if information requested from and submitted by Contractor fails to satisfy City and/or Contractor is unable to provide the information and/or documentation within the period requested.

Article 5 Insurance and Indemnity

5.1 **Insurance.**

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

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

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

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

(d) Reserved.

(e) Reserved.

(i) Reserved.

(ii) Reserved.

(f) Reserved

(g) Reserved

5.1.2 **Additional Insured**

(a) The Commercial General Liability Insurance policy must include as Additional Insured the City and County of San Francisco, and its Officers, Agents, and Employees.

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

5.1.3 **Waiver of Subrogation.** The Workers' Compensation Liability Insurance policy(ies) shall include a waiver of subrogation in favor of City for all work performed by the Contractor, and its employees, agents and subcontractors.

5.1.4 **Primary Insurance.**

(a) The Commercial General Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

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

Reserved.

5.1.5 **Other Insurance Requirements**

(a) Thirty (30) days' advance written notice shall be provided to 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 City address set forth in Section 11.1 entitled, "Notices to the Parties."

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, be maintained for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

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

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

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

5.2 **Indemnification**.

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii)

violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personal identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are 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, experts and related costs, and City's costs of investigating any claims against City.

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

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

5.2.4 Under no circumstances will City indemnify or hold harmless Contractor.

Article 6 Liability of the Parties

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

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

6.3 **Reserved.**

Article 7 Payment of Taxes

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

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

7.2 **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to timely report on behalf of City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by City to enable City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to 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 City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience

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

8.1.2 Upon receipt of the Notice of Termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to affect the termination of this Agreement on the Termination Date and to minimize the liability of Contractor and City to third parties as a result of the termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

(a) Completing performance of any Services that City requires Contractor to complete prior to the Termination Date.

(b) Halting the performance of all Services on and after the Termination Date.

(c) Cancelling all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

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

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

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

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

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

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

(c) The reasonable cost to Contractor of handling and returning material or equipment delivered to City or otherwise disposed of as directed by City.

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

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

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

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

8.2 **Termination for Default; Remedies.**

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

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

3.5	Submitting False Claims	10.10	Alcohol and Drug-Free Workplace
4.6	Assignment	10.13	Reserved
Article 5	Insurance and Indemnity	11.9	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

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

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

8.2.2 **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 Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this

Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with City.

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

8.2.4 Any notice of default must be sent in accordance with Article 11.

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

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

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

3.3.2	Deductions from Purchase Price Limited to Satisfactory Services.	8.2.2	Default Remedies
3.3.7(a)	Reserved	9.1	Reserved
3.4	Audit and Inspection of Records	9.2	Reserved
3.5	Submitting False Claims	11.6.3	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.7	Construction
6.1	Liability of City	11.8	Entire Agreement
6.3	Reserved	11.9	Compliance with Laws
Article 7	Payment of Taxes	11.10	Severability
8.1.6	Payment Obligation	Article 13	Data and Security

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

Article 9 Rights in Deliverables

9.1 **Reserved.**

9.2 **Reserved**.

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference**. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this

Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

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

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

10.4 **Reserved.**

10.5 **Reserved.**

10.5.1 **Reserved**.

10.5.2 **Reserved.**

10.6 **Reserved**.

10.7 **Reserved.**

10.8 **Reserved.**

10.9 **Reserved.**

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

10.11 **Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves; (ii) a candidate for that City elective office; or (iii) a committee controlled by such elected official or a

candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date 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 ten percent (10%) in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 **Reserved.**

10.13 **Reserved.**

10.14 **Reserved.**

10.14.1 **Reserved**.

10.14.2 **Reserved**.

10.15 **Nonprofit Contractor Requirements.**

10.15.1 **Good Standing.** If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General's Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City's request, Contractor shall provide documentation demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General's Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

10.15.2 **Public Access to Nonprofit Records and Meetings.** If Contractor is a nonprofit organization, provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries); and receives a cumulative total per year of at least $250,000 in City or City-administered funds, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein**.**

10.16 **Reserved.**

10.17 **Reserved**.

10.18 **Reserved**.

10.19 **Reserved**.

10.20 **Reserved**.

10.21 **Reserved**.

10.22 **Reserved**

10.23 **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 Agreement without prior written permission of Purchasing.

Article 11 General Provisions

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

To City:	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 Email: OCA@sfgov.org Phone: (415) 554-6743 Fax: (415) 554-6717
To Contractor:	Circosta Iron & Metal Co. Inc. 1801 Evans Avenue San Francisco, C 94124-1103 Cheri Polo Phone: (415) 282 - 8568 Fax: (415) 641 - 7804 cheri@circostametals.com

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by e-mail, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least ten (10) days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

11.2 **Compliance with Laws Requiring Access for People with Disabilities.**

11.2.1 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 people with disabilities. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

11.2.2 Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sec. 1201 et seq.), Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), Section 255 of the Communications Act Guidelines, the applicable Revised Section 508 Standards, and Web

Content Accessibility Guidelines 2.1, Level AA, as amended from time to time. Contractor shall ensure that all information content and technology provided under this Agreement fully conforms to the applicable Revised 508 Standard, as amended from time to time, prior to delivery and before the City's final acceptance of the Services and/or Deliverables.

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

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §7920 et seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

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

11.6 **Dispute Resolution Procedure**.

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. Disputes will not be subject to binding arbitration. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

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

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

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

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

11.9 **Compliance with Laws**. Contractor shall keep itself fully informed of City's Charter, codes, ordinances and duly adopted rules and regulations of City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times

comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

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

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

11.13 **Order of Precedence.** The Parties agree that this Agreement, including all appendices, sets forth the Parties' complete agreement. If the Appendices to this Agreement include any standard printed terms from Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between City's terms and Contractor's printed terms attached, City's terms in this Agreement shall take precedence, followed by the procurement issued by the department (if any), Contractor's proposal, and Contractor's printed terms, respectively. Any hyperlinked terms included in Contractor's terms shall have no legal effect.

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

Article 12 Department Specific Terms

12.1 **Click-Wrap Disclaimer.** No "click to accept" agreement that may be required for City and/or Authorized Users' access to the SaaS Services or Contractor's Website and no terms of use, terms of service, or privacy policy referenced therein or conditioned for use of the SaaS Services or Contractor's Website shall apply. Only the provisions of this Agreement as amended from time to time shall apply to City and/or Authorized Users for access thereto and use thereof. The Parties acknowledge that City and/or each Authorized User may be required to click "Accept" as a condition of access to the SaaS Services through Contractor's Website, but the provisions of such "click to accept" agreement and other terms (including terms of use, terms of service, and privacy policy) contained or referenced therein shall be null and void for City and/or each such Authorized User. The foregoing does not apply to City's own click-wrap agreements in the event City chooses to have Contractor include terms of use, terms or service, privacy policies, or similar requirements drafted and approved by City.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

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

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

13.2 Reserved.

13.3 Reserved.

13.4 Management of City Data.

13.4.1 **Use of City Data.** Contractor agrees to hold City Data received from, or created or collected on behalf of, City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by the City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

13.4.2 **Disposition of City Data**. Upon request of City or termination or expiration of this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all City Data given to, or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractor's

environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

13.4.3 **Protected Health Information. Where applicable,** Contractor, all subcontractors, all agents and employees of Contractor and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health information, if any, disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Agreement. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of protected health information given to Contractor or its subcontractors or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement.

13.5 **Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to City Data and any derivative works of City Data is the exclusive property of City.

13.6 **Loss or Unauthorized Access to City's Data; Security Breach Notification.** Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any "Leak") within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

Article 14 MacBride And Signature

14.1 **Reserved.**

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

CITY	**CONTRACTOR**
Recommended by: _____ **Wil Alderman** Contract Analyst Office of Contract Administration Approved as to Form: David Chiu City Attorney By: _____ Gustin Guibert Deputy City Attorney Approved: _____ Sailaja Kurella Director of the Office of Contract Administration, and Purchaser	Circosta Iron and Metal Co. Inc. _____ **Nick Circosta** **Vice President** City Supplier Number: **0000022835**

Appendices

A: Scope of Services
B: Calculation of Charges
C: Asset Pick-Up & Delivery Form
D: Sample Monthly Pick-Up Summary Form

Appendix A
Scope of Services

I. City Department's Responsibilities
II. Contractor's Responsibilities

The purpose of this Contract is for Contractor to purchase from City City-owned surplus of scrap metal for the purpose of reselling and recycling that metal. Set forth below are the minimum service level obligations of the Contractor. Contractor shall not construe from any given instances where the City fails to insist on strict adherence to any of the terms and conditions below as a waiver or relinquishment of such requirements. Employees, officers, and agents of the Contractor shall not be authorized to bid on City property when it is auctioned.

Prohibited Use: This Contract is for the sole use of City Departments. City contractors and subcontractors are prohibited from using this Contract.

Prohibited Items: Departments are prohibited from disposing of the following items under this Contract:

a. Vehicles and Heavy Equipment unless submitted to City's Central Shops for processing
b. Propane, Acetylene, Oxygen tanks
c. Batteries
d. Capacitors from buses
e. No fluid or oil allowed in machinery scrap
f. Fire extinguishers
g. Other hazardous materials

I. City's Responsibilities

A. **OCA:** OCA will be the City's central contact department for the disposal of all Assets under this Agreement. The designated representative of OCA is responsible for instructing the City Administrator's Accounting where to credit the proceeds of each sale.

B. **Central Shops:** Should the disposal consist of vehicles and heavy equipment, the City's Central Shops will serve as an additional central point of contact.

C. **Departments.** Department(s) shall designate a representative to interface, monitor and maintain adequate records of all transactions related to their department under this contract. The department representative shall represent the City's Department on all matters related to the administration and use of this contract, including but not limited to those outlined below.

(1) **For all Assets, excluding vehicles and heavy equipment**: the department representative:

i. Shall affirm that the Asset meets the following criteria:
    1. Contains aluminum, copper, brass materials, iron or steel; and
    2. No longer required and that the department has free and clear title for its disposal; and
    3. Obsolete and has no resale value; and

4. Where procured through federal or other grant funds, is not prohibited from being sold to and disposed of through Contractor.

ii. **Arrange Pick-up of Asset by Contractor or Delivery of Asset to Contractor:**

1. **Pick-up by Contractor:**
    a. Consolidate and stage the Asset at a centrally located and accessible area for loading onto trucks.
    b. Where applicable, coordinate with Contractor for delivery and pickup of metal debris boxes; load all scrap metal into metal debris boxes; and ensure that garbage or hazardous materials are not placed in the containers.
2. **Delivery to Contractor:**
    a. Coordinate with Contractor delivery of the Asset to Contractor's designated facility.

iii. **Asset Pick-Up & Delivery Form and Department Authorization to Dispose of Asset:**

1. Complete a separate Asset Pick-Up & Delivery Form for each load picked up by or delivered to Contractor.
2. Include with the Asset Pick-Up & Delivery Form a written authorization from the City department's Department Head or authorized delegate confirming that disposal of the Asset is permissible.
3. Retain original copy of the Asset Pick-Up & Delivery and written authorization to dispose of the Asset.
4. Provide Contractor with a copy of the Asset Pick-Up & Delivery and written authorization to dispose of the Asset.
5. Email OCA@sfgov.org with a copy of the Asset Pick-Up & Delivery and written authorization to dispose of the Asset.

(2) **For Assets consisting of vehicles and heavy equipment**:

i. **The department representative shall:**

1. Contact Central Shops to process the request on the department's behalf.
2. Furnish Central Shops with written authorization from the City department's Department Head or authorized delegate confirming that disposal of the Asset is permissible.
3. Furnish Central Shops with the certificate of ownership, registration card, owner's manual, maintenance records, certifications and permits issued, product specification and a copy of the purchase order.
4. Disclose to Central Shops any known material defects, and/or hazardous materials contained within the vehicle.

5. Deliver all license plates issued by the Department of Motor Vehicles for turned-in vehicles, trailers and equipment to the designated representative of Central Shops for proper disposal.
6. Inform the department's accounting that the Asset has been disposed.

ii. **Central Shops shall**:

1. Facilitate the disposal and removal of the Asset on behalf of the department.
2. Drain all fluids from the Asset and remove all wheels and tires and deliver the Asset to Contractor at Contractor's designated facility.
3. Complete a separate Asset Pick-Up & Delivery Form for each Asset delivered to Contractor.
4. Retain original copy of the Asset Pick-Up & Delivery and the department's written authorization to dispose of the Asset.
5. Provide Contractor with a copy of the Asset Pick-Up & Delivery and the department's written authorization to dispose of the Asset.
6. Email OCA@sfgov.org with a copy of the Asset Pick-Up & Delivery and the department's written authorization to dispose of the Asset.

(3) **Violations**: Where applicable, the department shall notify OCA concerning any incidents in which Contractor has not complied with its obligations under this Contract.

II. Contractor's Responsibilities

A. **Site Visit to Confirm Suitability of Asset for Recycling:** Upon the request of an ordering Department or when Contractor believes a site visit is warranted, Contractor shall conduct a site visit with that Department's Representative to assess the suitability of the Asset for recycling. The site visit shall be conducted at a mutually acceptable time, which shall be no later than three (3) business days from the date requested by City, unless City and Contractor mutually agree to a different duration.

B. **Obtain Authorization to Remove Asset**: Prior to accepting any Asset from City, Contractor shall first collect a copy of the Asset Pick-Up & Delivery and the department's written authorization to dispose of the Asset.

C. **Monthly Pick-Up Summary Form Due on or before the 10th Day of Each Month:** On or before the 10th of each Month, Contractor shall email OCA@sfgov.org a Monthly Pick-Up Summary Form, a copy of which is attached as Appendix D. The Monthly Pick-Up Summary Form shall be completed in full and provide information for all Assets received from City for the prior month and total amount due to City. Contractor shall include with the Monthly Pick-Up Summary Form copies of

(1) all Asset Pick-Up & Delivery Forms (Appendix C) collected for the applicable month,

(2) applicable AMM price sheets (as published on the 1st Monday of the month) for each metal picked up, and
(3) original Weight Certificate for each pick-up

D. **Asset Pick-Up Timeline:** Unless mutually agreed upon by the parties, Contractor shall pick-up assets within three (3) business days of a request.

E. **Metal Debris Boxes:**

(1) **Delivery of Debris Boxes:** Upon request and unless mutually agreed upon by the parties, Contractor shall deliver within three (3) business days of a request metal debris boxes in good working condition **at no cost to City** for the accumulation of scrap metal to City facilities. Delivery shall be Monday through Friday, between 7:00 a.m. and 4:00 p.m., depending on the hours of operation for the City Department Facility

(2) **Debris Box Sizes:** Unless otherwise agreed to by the parties, containers may be in any of the following sizes:

- 4'L x 4'W x 4'H
- 6'L x 4'W x 4'H
- 12'L x 8'W x 6'H
- 18'L x 8'W x 6'H
- 14'L x 8'W x 5'H
- 18'L x 8'W x 6'H
- 20'L x 8'W x 6'H

(3) **Labeling of Debris Boxes:** Containers shall be clearly marked with the Contractor company name, telephone number, and labeled "For Scrap Metal Recycling Only."

(4) **Removal and Replacement of Debris Boxes:** Contractor shall remove or exchange filled scrap metal containers within three (3) business days of notification, or as scheduled by mutual agreement of the parties. Removal shall be Monday through Friday, between 7:00 a.m. and 4:00 p.m., depending on the hours of operation for the City Department Facility.

F. **Rates/Minute Charged to City for Pick-ups that Exceed 60 Minutes:**

(1) Except for San Francisco Municipal Railway (MUNI) Maintenance Facilities (see Subsection 3 below), Contractor shall allocate 60 minutes or less for the pick-up of City Assets, the delivery of Debris Boxes or the removal of Debris Boxes. The 60 minutes shall begin upon arrival at the mutually agreed upon scheduled time for pick-up or delivery.

(2) If due to City's error Contractor is unable to complete a pick-up or delivery within 60 minutes of arrival time, Contractor may charge the City based on the Wait Time charges specified in Appendix B, Calculation of Chargers.

(3) **San Francisco Municipal Railway (MUNI) Maintenance Facilities**: MUNI facilities have insufficient space to store debris boxes of substantial sizes for any length of time. At these locations, scrap metal is accumulated in small hoppers and other metal containers. As these containers become full, the Contractor will be contacted to pick-up the scrap. Contractor shall drop off a scrap metal container to the designated location, wait while MUNI staff loads the scrap into the container, and remove the container when finished. **The wait time charges set forth in Appendix B, Calculations of Charges, shall <u>not</u> be applied to these removals**. To achieve economies of scale, Contractor may elect to coordinate removal with several MUNI maintenance facilities for the same day.

G. **Weighing of Assets:**

(1) **For Assets consisting of brass water meter fixtures parts**: Brass water meter fixtures parts shall be weighted by City using certified scale(s) at the San Francisco Public Utilities Commission (SFPUC). Contractor shall accept such weights as true and payable.

(2) **For all other Assets:**

i. Contractor shall weigh scrap metal removed; gross weight less tare weight of container on a sale/weight station certified by the State of California at their own expense.
ii. Contractor shall obtain a weight ticket from said weight station verifying each load of scrap metal removed.
iii. Contractor shall email the scanned weight ticket(s) for each load removed to the ordering department within forty-eight (48) hours of each Asset removal.

H. **Other:**

(1) Contractor and Contractor's employees may not operate any vehicles or equipment owned, leased or rented by the City.

(2) Contractor may reject any items containing more than the maximum contamination (wood, concrete, plastics, insulation and other metals), specified for each type of metal listed in Appendix B. In no event shall City be liable for any fees associated with the removal or return of rejected items.

(3) Under no circumstances shall Contractor combine such loads from different departments and shall only combine them from facilities within the same department.

Appendix B
Calculation of Charges

1. Asset Types and Applicable AMM Categories

Metal	Metal Description	AMM Scrap Metal Category and Market Area Symbol	AMM Scrap Metal Category and Market Area Description
ALUMINUM, OLD, SHEET/CASTING	Aluminum materials including old street signs containing a maximum of 35% contaminants.	MB-AL-0028	Aluminum scrap mixed clips buying price, delivered to Midwest secondary smelters, US cents/lb.
BRASS, YELLOW, HEAVY	Brass materials other than plumbing fixtures containing a maximum of 35% contaminants.	MB-CU-0301	Copper scrap yellow brass solids, buying price, delivered to brass ingot makers, US cents/lb.
BRASS, RED, COCKS & FAUCETS	Brass plumbing fixtures including water meters and valves containing a maximum of 1.5% contaminants.	MB-CU-0301	Copper scrap yellow brass solids, buying price, delivered to brass ingot makers, US cents/lb.
COPPER, NO.2, HEAVY/WIRE	Copper materials including insulated wire containing a maximum of 35% contaminants.	MB-CU-0308	Copper scrap light copper, buying price, delivered to brass ingot makers, US cents/lb.
IRON & STEEL, NO.2, H/M, <=35% contaminants.	Iron and steel materials including furniture, vehicles, and appliances, containing a maximum of 35% contaminants.	MB-STE-0373	Steel scrap No2 bundles, export yard buying price, delivered to yard Los Angeles, $/gross ton
IRON & STEEL, NO.2, H/M, =>36% contaminants	Iron and steel materials containing 36% or more contaminants or requiring special handling such as onsite cutting and special loading, and other metals not	MB-STE-0373	Steel scrap No2 bundles, export yard buying price, delivered to yard Los Angeles, $/gross ton

	specified above such as stainless steel, steel turnings, and lead.		
*** Contaminants consist of wood, concrete, plastics, insulation and other metals.**			

2. **Fee structure**
   A. **Payment Price of City Assets by Asset Type:**
      a. Contractor's Payment Price to City shall equal Contractor's awarded % above (+) or below (-) the specified American Metal Market ("AMM") price by Asset Type, based on the AMM Category and Units of Measure specified in this Appendix. **This percentage must be firm for the duration of the contract**.
      b. The AMM Price will equal the average of the highest and lowest AMM price for a metal based on the AMM Category and Units of Measure specified in this Appendix during the month of pick-up.
      c. Contractor's Payment Price shall be inclusive of:
         i. Pick-up timed of up to 60 minutes, except for MUNI.[1]. A Pick-up is defined as a single visit occurring at a single location for a specific pick-up.
         ii. All costs associated with the delivery and removal of debris boxes.
         iii. All costs associated with the receipt and breakdown of a vehicle and heavy equipment, so long as the vehicle and heavy equipment have been delivered by Central Shops in the form outlined in the Scope of Work.
      d. The Payment Price shall be carried out and rounded to the second decimal place.
   B. **Payment Amount by Asset**. The Payment Amount by Asset shall equal the Payment Price by Asset Type multiplied by the total quantity of metal removed.
   C. **Gross Monthly Payment Amount**. The Gross Monthly Payment Amount shall equal the sum of all Payment Amounts by Asset Type for an applicable month.
   D. **Net Monthly Payment Amount.** The Net Monthly Payment Amount shall equal the Gross Monthly Payment Amount less any Wait Time Charges and other City-

[1] As set forth in Appendix A, MUNI facilities have insufficient space to store debris boxes of substantial sizes for any length of time. At these locations, scrap metal is accumulated in small hoppers and other metal containers. As these containers become full, the Contractor will be contacted to pick up the scrap. Contractor shall drop off a scrap metal container to the designated location, wait while MUNI staff loads the scrap into the container, and remove the container when finished. ***The wait time charges set forth below shall not be applied to these removals.*** In order to achieve economies of scale, Contractor may elect to coordinate removal with several MUNI maintenance facilities for the same day.

approved adjustments. The City must approve of all adjustment charges specified by the Contractor.

E. **Travel and Expense Reimbursement.** Contractor is prohibited from charging the City for training of employees, travel expenses, maintaining permits, certifications and licenses for the duration of this Contract. Additionally, Contractor shall not charge the City for time spent on site visits of City's facilities and resolving disputes.

F. **Rates Charged to City for Pick-ups that Exceed 60 Minutes:** Charges for wait time greater than 60 minutes shall be subject to the terms set forth in Section of the Scope of Work II (F).

G. **Price Adjustments for Rates Charged to City for Pick-ups that Exceed 60 Minutes ("Waiting Time"):** Contractor's Rates for the Waiting Time are to be firm for the first 12 months of the Agreement. Thereafter, City and Contractor may agree to adjust Contractor's Rates for the Waiting Time in accordance with the following terms:

   a. **When to request a Price Adjustment:**
      i. Requests for Price Adjustments must be made in writing to City.
      ii. Contractor may request Price Adjustments no sooner than twelve (12) months from the Contract Start Date.
      iii. Only (1) one Price Adjustment shall be approved in any twelve (12) month period.
      iv. If approved, Price Adjustments will be implemented with an Amendment to this Agreement and shall be effective upon execution of the Amendment.

   b. **How Price Adjustments will be Calculated:**
      i. Requests for price adjustments must be supported by the U.S. Department of Labor's most recently published, **non-preliminary** Consumer Price Index (CPI) available at the time of Contractor's Price Adjustment request. The requested rate change shall be calculated from the last requested Price Adjustment or, if no Price Adjustment has previously been requested, from the Contract Start Date.

Series Id:	CUUR0000SEHG
Series Title:	Water and sewer and trash collection services in U.S. city average, all urban consumers, not seasonally adjusted
Item:	Water and sewer and trash collection services
Seasonality:	Not Seasonally Adjusted
Base Date:	U.S. City Average
Website:	Bureau of Labor Statistics Data

Appendix C
Asset Pick-Up & Delivery Form

Instructions to City Departments:

(1) **Prohibited Items:** Departments are prohibited from disposing of the following items under this Contract:
   a. Vehicles and Heavy Equipment unless submitted to City's Central Shops for processing
   b. Propane, Acetylene, Oxygen tanks
   c. Batteries
   d. Capacitors from buses
   e. No fluid or oil allowed in machinery scrap
   f. Fire extinguishers
   g. Other hazardous materials

(2) **For all Assets, excluding vehicles and heavy equipment**, the department representative:
   i. **Shall affirm that the Asset is**:
      1. Contain aluminum, copper, brass materials, iron or steel.
      2. No longer required and that the department has free and clear title for its disposal;
      3. Obsolete and has no resale value; and
      4. Where procured through federal or other grant funds, is not prohibited from being sold to and disposed of through Contractor.

   ii. **Arrange Pick-up of Asset by Contractor or Delivery of Asset to Contractor:**
      1. **Pick-up by Contractor:**
         a. Consolidate and stage the Asset at a centrally located and accessible area for loading onto trucks.
         b. Where applicable, coordinate with Contractor for delivery and pickup of metal debris boxes; load all scrap metal into metal debris boxes; and ensure that garbage or hazardous materials are not placed in the containers.
      2. **Delivery to Contractor:**
         a. Coordinate with Contractor delivery of the Asset to Contractor's designated facility.

   iii. **Asset Pick-Up & Delivery Form and Department Authorization to Dispose of Asset:**
      1. Complete a separate Asset Pick-Up & Delivery Form for each load picked up by or delivered to Contractor.
      2. Include with the Asset Pick-Up & Delivery Form a written authorization from the City department's Department Head or authorized delegate confirming that disposal of the Asset is permissible.
      3. Retain original copy of the Asset Pick-Up & Delivery and written authorization to dispose of the Asset.
      4. Provide Contractor with a copy of the Asset Pick-Up & Delivery and written authorization to dispose of the Asset.
      5. Email OCA@sfgov.org with a copy of the Asset Pick-Up & Delivery and written authorization to dispose of the Asset.

Asset Pick-Up & Delivery Form for Scrap Metal

I. Deliver Container To/Pick-up From:

II. [ ] New/One Time
[ ] Exchange/On-Going

Dept: _____ Div/Bureau: _____
Contact: _____ Phone No: _____
Drop Off/Pick-up Location: _____
Delivery, Date/Time Called: _____ Pick-up, Date/Time Called: _____

Size of Container(s) Requested/Picked Up:

Debris Box *(indicate Qty if more than 1)*
[ ] 4'L x 4'W x 4'H [ ] 6'L x 4'W x 4'H [ ] 14'L x 8'W x 5'H [ ] 18'L x 8'W x6'H [ ] 22'L x 8'W x 8'H

III. Type of Metal in the Container: **Contaminants are non-hazardous materials such as other metals, wood, concrete and plastics.**

[ ] Aluminum materials including old street signs containing a maximum of 35% contaminants.
[ ] Brass materials not specifically identified below containing a maximum of 35% contaminants
[ ] Brass plumbing fixtures including water meters and valves containing a maximum of 1.5% contaminants.
[ ] Copper materials including insulated wire containing a maximum of 35% contaminants.
[ ] Iron and steel including furniture and appliances containing a maximum of 35% contaminants.
[ ] All metals not listed above, above metals containing 36% or more contaminants, and/or loads requiring special handling.

Supplier Ticket/Receipt No. _____

Print Driver's Name: _____ Initial: _____ Date: _____

Contractor's Performance:

Delivered size requested [ ] Yes [ ] No
Delivered as scheduled [ ] Yes [ ] No
Picked up container, as scheduled [ ] Yes [ ] No
[ ] Other, explain:

Appendix D
Sample Monthly Pick-Up Summary Form

Contractor shall complete all yellow fields for each Monthly Pick-Up Summary Form. Each form must include:
1) Applicable AMM price sheets (as published on the 1st Monday of the month) for each metal picked up.
2) Original Weight Certificate ("WC") for each pick-up.
3) Department Asset Pick-Up & Delivery Form for each pick-up.

Sample Monthly Pick-Up Summary Form (Contractor to Complete all Yellow Fields)

A. Monthly Payment Price Calculations

ITEM NO. & METAL TYPE	AMM Symbol #	AMM LOWEST PRICE FOR MONTH OF PICK UP	AMM HIGHEST PRICE FOR MONTH OF PICK UP	AMM AVG PRICE FOR MONTH OF PICK UP	Awarded % Above (+) or Below (-) the AMM Price to be Paid to City	Payment Price by Asset Type
ALUMINUM, OLD, SHEET/CASTING	MB-AL-0028	$ 0.75 LB	$ 0.59 LB	$ 0.67 LB	10.0%	$ 0.74 LB
BRASS, YELLOW, HEAVY	MB-CU-0301	$ 2.83 LB	$ 2.43 LB	$ 2.63 LB	5.0%	$ 2.76 LB
BRASS, RED, COCKS & FAUCETS	MB-CU-0301	$ 2.83 LB	$ 2.43 LB	$ 2.63 LB	-24.0%	$ 2.00 LB
COPPER, NO.2, HEAVY/WIRE	MB-CU-0308	$ 3.32 LB	$ 4.37 LB	$ 3.85 LB	-5.0%	$ 3.65 LB
IRON & STEEL, NO.2, H/M, <=35% contam.	MB-STE-0373	$ 68.75 GT	$ 116.25 GT	$ 92.50 GT	29.0%	$ 119.33 GT
IRON & STEEL, NO.2, H/M=>36%	MB-STE-0373	$ 68.75 GT	$ 116.25 GT	$ 92.50 GT	-65.0%	$ 32.38 GT
CHARGE FOR WAIT TIMES > 60 MINUTES						$ 2.00 Minute

Scrap Metal Pick Up Form for: Enter Month Enter Year

Definitions

ALUMINUM, OLD, SHEET/CASTING: Aluminum materials including old street signs containing a maximum of 35% contaminants.

BRASS, YELLOW, HEAVY: Brass materials other than plumbing fixtures containing a maximum of 35% contaminants.

BRASS, RED, COCKS & FAUCETS: Brass plumbing fixtures including water meters and valves containing a maximum of 1.5% contaminants.

COPPER, NO.2, HEAVY/WIRE: Copper materials including insulated wire containing a maximum of 35% contaminants.

IRON & STEEL, NO.2, H/M, <=35% contam.: Iron and steel materials including furniture, vehicles, and appliances, containing a maximum of 35% contaminants.

IRON & STEEL, NO.2, H/M => 36% Iron and steel materials containing 36% or more contaminants, or requiring special handling such as onsite cutting and special loading, and other metals not specified above such as stainless steel, steel turnings, and lead.

*** Contaminants consists of wood, concrete, plastics, insulation and other metals.**

Mandatory Attachments:
1) Applicable AMM price sheets (as published on the 1st Monday of the month) for each metal picked up.
2) Original Weight Certificate ("WC") for each pick up.
3) Department Asset Pick-Up & Delivery Form for each pick up.

B. Pick Up Details

DATE	DEPT	LOCATION	Enter Wait Time Greater than 60 Minutes (Minutes)	ALUMINUM, OLD, SHEET/CASTING	BRASS, YELLOW, HEAVY	BRASS, RED, COCKS & FAUCETS	COPPER, NO.2, HEAVY/WIRE	IRON & STEEL, NO.2, H/M, <=35% contam.	IRON & STEEL, NO.2, H/M=>36%
03/12/26	PUC	2650 Bayshore Blvd, S.F.	30 Minutes	100 LB	100 LB	100 LB	100 LB	9,000 LB	5,000 LB
03/15/26	PUC	2650 Bayshore Blvd, S.F.	15 Minutes	100 LB	LB	LB	LB	2,500 LB	LB
			Minutes	LB	LB	LB	LB	LB	LB
			Minutes	LB	LB	LB	LB	LB	LB
			Minutes	LB	LB	LB	LB	LB	LB
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			Minutes	LB	LB	LB	LB	LB	LB
			Minutes	LB	LB	LB	LB	LB	LB
			Minutes	LB	LB	LB	LB	LB	LB
			Minutes	LB	LB	LB	LB	LB	LB
		Total Quantity:	45 Minutes	200.00 LB	100.00 LB	100.00 LB	100.00 LB	5.75 GT	2.23 GT
		Payment Price by Asset Type:	$ (2.00) Minutes	$ 0.74 LB	$ 2.76 LB	$ 2.00 LB	$ 3.65 LB	$ 119.33 GT	$ 32.38 GT
		Total Due:	$ (90.00)	$ 147.40	$ 276.15	$ 199.88	$ 365.28	$ 686.12	$ 72.27

B. Payment Amount

Gross Monthly Payment Amount Due to City:	$ 1,657.09
Less Other Deductions:	$ -
Net Monthly Payment Amount Due to City:	$ 1,657.09

Explain any other adjustments below:

San Francisco Office of the City Administrator
City Administrator Carmen Chu

As-needed citywide services for pick-up and disposal of City owned scrap metal (TC76617)

File 250250

Office of Contract Administration

Board of Supervisors Budget and Finance Committee

April 23, 2025

Contract Summary

- **Contractor:** Circosta Iron and Metal Co. Inc.
- **Duration:** Five years: June 1, 2025 - May 31, 2030.
- **Anticipated Revenue:** Approximately $891,313 over 5 years. With a 20% market fluctuation on metal prices, OCA anticipates its new Contract could generate up to $1,069,575 over 5 years.
- **Scope**: Circosta Iron and Metal Co. Inc. will provide pickup and disposal services for the City's scrap metal. Pickups will take place at a range of City sites upon the request of individual departments.

What is Scrap Metal?

- **Metal Equipment with No Resale Value**: old street signs, plumbing fixtures, water meters, valves, wire, steel furniture, vehicles, and appliances.

- **Vehicles**: In limited circumstances, the City may sell vehicles and heavy equipment as scrap metal. The City's Central Shops will evaluate vehicles to determine whether to sell at auction or as scrap metal.

Purchasing Authority

- OCA's existing contract for scrap metal pickup and disposal services is also with Circosta Iron and Metal Co. Inc. The contract will expire on May 31, 2025.
- In anticipation of the expiration of this contract, OCA issued an Invitation for Bids on February 7, 2025.
- OCA received 1 responsive bidder.

Request Summary

- Approval of PeopleSoft Contract 1000035528 with **Circosta Iron and Metal Co. Inc**. for as-needed citywide sale of city-owned scrap metal for pick-up & disposal.
- The proposed contract anticipates revenue that may exceed $1 million, which requires approval by the Board of Supervisors.

Reference materials

SF Admin. Code Section 21.03(i)(l)

- SF Admin. Code Section 21.03(i)(l) authorizes OCA to sell surplus assets and requires that such disposal be done in a manner that best serves the interests of the City. This includes:
  - maximize the City's economic return on surplus assets;
  - maximize the reuse of surplus assets by public entities, non-profit organizations and schools; and
  - avoid unnecessary additions to the waste stream.
- Consistent with SF Admin. Code Section 21.03(i)(l), Circosta Iron and Metal Co. Inc.
- will ensure City can sell their scrap metal debris through monthly and as-needed pickups.
- Each sale of scrap metal will be facilitated by individual departments or for fleet related items, through Central Shops.

Pricing Structure

- The fee structure for the contract is based on the American Metal Market ("AMM") price and includes various factors related to payment, adjustments, and reimbursements.
- The AMM price is calculated as the average of the highest and lowest prices for a given metal category during the month of pick-up.
- The payment price includes pick-up times of up to 60 minutes per visit, delivery and removal of debris boxes, and costs related to processing the scrap metal. The net monthly payment is determined by deducting any approved wait time charges and other City-authorized adjustments from the gross amount.

Anticipated Revenue

- Based on scrap metal sales data from 2022, 2023 and 2024, the gross proceeds for Scrap Metal sold to Circosta under its existing Contract 1000035102 averaged $178,263 per year.

- Using this historical data, OCA projects that the gross proceeds for City assets to be sold by Vendor under its new Contract 1000035528 will be approximately $891,313 over 5 years and using a 20% market fluctuation on metal prices, OCA anticipates its new Contract could generate up to $1,069,575 over 5 years.

Est. Total Revenues for Proposed Contract 1000035528 Over a 5-Year Period

2022	$	199,136.84
2023	$	184,948.69
2024	$	150,702.22
Total 3-year Revenue	$	534,787.75
Average Annual Revenue	$	178,262.58
Anticipated 5-year revenue including a potential 20% market fluctuation	**$**	**1,069,575.50**

Docusign Envelope ID: 975F1EE8-0CA1-44F5-B2AB-3E4A3480481B

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 #: 250250

Bid/RFP #: 000009150

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
Legislative Clerks Division	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
Wil Alderman	628-652-1647
FULL DEPARTMENT NAME	**DEPARTMENT CONTACT EMAIL**
OCA Office of Contract Administration	wil.alderman@sfgov.org

Docusign Envelope ID: 975F1EE8-0CA1-44F5-B2AB-3E4A3480481B

Incomplete - Pending Signature

5. CONTRACTOR	
NAME OF CONTRACTOR Circosta Iron and Metal Co. Inc.	**TELEPHONE NUMBER** 415-282-8568
STREET ADDRESS (including City, State and Zip Code) 1801 Evans Ave. San Francisco, CA 94124	**EMAIL** cheri@circostametals.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	**ORIGINAL BID/RFP NUMBER** 000009150	**FILE NUMBER (*If applicable*)** 250250
DESCRIPTION OF AMOUNT OF CONTRACT 0		
NATURE OF THE CONTRACT *(Please describe)* Sale of City Owned Scrap Metal. There is no cost to City so contract expenditure is $0.00 however it is anticipated the contract will receive revenues potentially over $1MM over 5 years.		

7. COMMENTS

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: 975F1EE8-0CA1-44F5-B2AB-3E4A3480481B

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	Circosta	Nick	Other Principal Officer
2	Circosta	Steve	Other Principal Officer
3	Circosta	Diane	Other Principal Officer
4			
5			
6			
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Docusign Envelope ID: 975F1EE8-0CA1-44F5-B2AB-3E4A3480481B

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**
20			
21			
22			
23			
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Docusign Envelope ID: 975F1EE8-0CA1-44F5-B2AB-3E4A3480481B

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**
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			
☐	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
Daniel Lurie, Mayor

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

DATE: March 17, 2025

TO: Angela Calvillo, Clerk of the Board

FROM: Sailaja Kurella, Director of Office of Contract Administration

SUBJECT: Resolution for approval of Contract 1000035528 – As-needed citywide sale of city-owned scrap metal for pick-up & disposal with Circosta Iron and Metal Co. Inc.

The Office of Contract Administration ("OCA") respectfully requests approval of PeopleSoft Contract 1000035528 (Term Contract 76617) for the as-needed citywide sale of city-owned scrap metal for pick-up and disposal with Circosta Iron and Metal Co. Inc ("Circosta"). The proposed contract, which has a duration of five (5) years starting June 1, 2025 and ending May 31, 2030, may have anticipated revenues exceeding $1 million which, based on Charter Section 9.118(a), requires approval by the Board of Supervisors.

Background

Section 21.03(i) of the San Francisco Administrative Code requires City to dispose of surplus Commodities in a manner that "best serve[s] the interests of the City." For the purposes of Section 21.03(i)(l), the disposal methods that best serve the interest of the City include:

1) maximizing the City's economic return on surplus assets,
2) maximizing the reuse of surplus assets by public entities, non-profit organizations and schools, and
3) avoiding any unnecessary additions to the waste stream.

Once a City department deems an asset to be surplus, Section 21.03(i)(l) authorizes OCA to sell that asset. Consistent with this authority, the proposed Contract 1000035528 with Circosta will ensure City departments can sell their surplus scrap metal assets ("Scrap Metal"), as needed, through a salvage service ("salvage services") contract. Scrap metal sold under this contract includes, but is not limited to, old street signs, plumbing fixtures, water meters, valves, wire, steel furniture, vehicles, and appliances deemed to have no resale value. The sale of vehicles and equipment will be overseen by Fleet Management, a division of the City Administrator's Office, which is responsible for purchasing, managing, and maintaining all City vehicles and equipment.

Purchasing Authority

OCA's existing contract for salvage services, PS Contract ID 1000035102, is also with Circosta and Contract 1000035102 expires on May 31, 2025. In anticipation of the expiration of this contract, OCA issued an Invitation for Bids ("IFB") on February 7, 2025, under Sourcing Event 0000009150. In response, OCA received one proposal, which was evaluated based on the criteria set forth in Table 1.

Table 1: Sourcing Event 0000009150 Evaluation Criteria

Evaluation Phase	Evaluation Criteria
Minimum Qualifications Documentation	**Pass/Fail**
Bid Sheet	**Highest Estimated Annual Proceeds to City**

Scope of Services

Under the proposed Contract 1000035528, Circosta will purchase City-owned surplus scrap metal for resale and recycling. However, certain items are prohibited from disposal under this contract, including propane, acetylene, and oxygen tanks; batteries; bus capacitors; fluids or oils; fire extinguishers; and other hazardous materials.
In limited circumstances, the City may sell vehicles and heavy equipment as scrap metal. The City's Central Shops division will evaluate each asset to determine whether it is in the City's best interest for the asset to be sold at auction or scrapped for recycling.

Pricing Structure and Anticipated Revenue

The fee structure for the contract is based on the American Metal Market ("AMM") price and includes various factors related to payment, adjustments, and reimbursements. Circosta's payment price to the City is determined by applying the awarded percentage above or below the specified AMM price for each asset type, with this percentage remaining fixed throughout the contract duration. The AMM price is calculated as the average of the highest and lowest prices for a given metal category during the month of pick-up. The payment price includes pick-up times of up to 60 minutes per visit, delivery and removal of debris boxes, and costs related to processing the scrap metal. The total payment amount for each asset is calculated by multiplying the payment price by the total quantity of metal removed, with the gross monthly payment being the sum of all asset payments. The net monthly payment is determined by deducting any approved wait time charges and other City-authorized adjustments from the gross amount.

Table 2: Fee Structure under Proposed Contract 1000035528

Line	Description	Unit of Measure	% over AMM Price
1	Aluminum materials including old street signs	Pound	35%
2	Brass materials other than plumbing fixtures	Pound	-10%
3	Brass plumbing fixtures including water meters and valves	Pound	-10%
4	Copper materials including insulated wire	Pound	5%
5	Iron and steel materials including furniture, vehicles, and appliances	Gross Ton	75%
6	All of the above metals containing 36% or more contaminants or requiring special handling such as onsite cutting and special loading, and other metals not specified above such as stainless steel, steel turnings, and lead.	Gross Ton	80%
7	Wait Time Charges	Per Minute	No Charge

Table 3: Revenues between 2021 and 2023 under Existing Contract 1000024326

2022	2023	2024	Total 3-Year Revenue	Average Annual Revenue
$ 199,137	$ 184,949	$ 150,702	$ 534,788	$ 178,263

Based on scrap metal sales data from 2022, 2023 and 2024, the gross proceeds for Scrap Metal sold to Circosta under its existing Contract 1000035102 averaged $178,263 per year.
Using this historical data, OCA projects that the gross proceeds for City assets to be sold by Vendor under its new Contract 1000035528 will be approximately $891,313 over 5 years and using a 20% market fluctuation on metal prices, OCA anticipates its new Contract could generate up to $1,069,575 over 5 years.

Delayed Revenue Generation

The sale of scrap metal is an important revenue stream for the City, and any delay in continuing these sales will postpone the receipt of these revenues.

1. **Increased Costs**: Without a contract in place, the City will be forced to store scrap metal, incurring additional storage fees. The City has limited storage capacity, particularly for large items such as vehicles and heavy machinery, which would compound these expenses.

2. **Operational Inefficiency**: The lack of an efficient sales process will disrupt the City's efforts to manage its scrap metal. Prolonged storage could also lead to inadequate space for incoming assets and create waste stream contamination.

Recommendation

This contract is essential for managing the City's scrap metal, maximizing revenue from sales, and ensuring proper disposal to prevent waste stream contamination. Without it, the City risks insufficient space for incoming materials, and accumulated scrap metal could become a hazard. Approval of this resolution will provide the City with the necessary resources to efficiently dispose of scrap metal and maintain clean, hazard-free spaces. Additionally, the City risks losing out on an average of $176k annually and could incur additional costs to dispose of the scrap metal.

If you have any questions or require additional information, please contact Wil Alderman at 628-652-1647.

Enclosures:

1. Contract 1000035528 Proposed Agreement
2. Contract 1000035528 SFEC Form 126(f)2
3. Contract 1000035528 SFEC Form 126(f)4
4. Contract 1000035528 Resolution