

**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**

**Macias Gini & O'Connell LLP**

This Agreement is made this First day of July, 2016, in the City and County of San Francisco, State of California, by and between Macias Gini & O'Connell LLP, 2121 N. California Blvd., Suite 750, Walnut Creek, CA 94596 ("Contractor") and City.

**Recitals**

WHEREAS, the Controller's Office ("Department") wishes to obtain independent auditing and accounting services to comply with City Charter 2.115 and California Government Code Sections 25250 and 25253, which require the City to have annual audits performed by independent public accounting firms for the following entities and areas:

- Group 1: The City's Comprehensive Annual Financial Report (CAFR), General City, Single Audit, and other funds
- Group 2: Employees' Retirement System (ERS)
- Group 3: Redevelopment Agency (RDA) and Financing Authority/ Successor Agency to RDA (beg. FYE 12)
- Group 7: Port of San Francisco
- Group 8: San Francisco Finance Corporation
- Group 11: Various State of California Project Grants
- Group 12: Retiree Health Benefit Trust

WHEREAS, a Request for Proposal (“RFP”) was issued on October 30, 2015, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, the Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement is 10%; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number PSC#45651-13/14 on April 21, 2014; approved by PSC#45651-13/14 Modification 1 on June 25, 2015; approved by PSC#45651-13/14 Modification 2 on February 4, 2016;

WHEREAS, approval for this Agreement was obtained when the

Now, THEREFORE, the parties agree as follows:

#### **Article 1     Definitions**

The following definitions apply to this Agreement:

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

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

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

1.4     "Contractor" or "Consultant" means Macias Gini & O’Connell LLP, 2121 N. California Blvd., Suite 750, Walnut Creek, CA 94596.

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

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

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

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

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

## **Article 2 Term of the Agreement**

2.1 The term of this Agreement shall commence on the latter of: (i) July 1, 2016; or (ii) the Effective Date and expire on June 30, 2020, unless earlier terminated as otherwise provided herein.

2.2 The City has options to renew the Agreement for a period of up to three (3) additional years. The City may extend this Agreement beyond the expiration date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

## **Article 3 Financial Matters**

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

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

3.2 **Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor,

any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

### 3.3 **Compensation.**

3.3.1 **Payment.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Controller, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **\$9,388,686.00** (nine million, three hundred eighty-eight thousand, six-hundred and eighty-six dollars and no cents). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In no event shall City be liable for interest or late charges for any late payments.

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

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

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

3.3.5 **LBE Payment and Utilization Tracking System.** Contractor must submit all required payment information using the online LBE Utilization Tracking System (LBEUTS) as required by CMD to enable the City to monitor Contractor's compliance with the

LBE subcontracting commitments in this Agreement. Contractor shall pay its LBE subcontractors within three working days after receiving payment from the City, except as otherwise authorized by the LBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required CMD payment information. Failure to submit all required payment information to the LBEUTS with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required payment information is provided. Following City's payment of an invoice, Contractor has ten calendar days to acknowledge using the online LBEUTS that all subcontractors have been paid. Contractor shall attend a LBEUTS training session. LBEUTS training session schedules are available at [www.sfgov.org/lbeuts](http://www.sfgov.org/lbeuts).

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

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

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

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

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or

subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

#### **Article 4 Services and Resources**

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

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

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

Subcontractors for this Agreement include Lamorena & Chang, CPA, and Louie & Wong LLP.

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

**4.4.1 Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.4.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or

arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

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

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

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

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

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

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

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



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

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

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

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

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

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

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

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

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

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

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. City shall give Contractor prompt notice of any claim covered by the foregoing indemnification provisions and Contractor shall have the right to defend, settle and compromise any such claim except that Contractor shall seek City's prior written consent to settle or compromise any claim if Contractor contends City also share in any liability.

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

## **Article 6 Liability of the Parties**

6.1 **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION

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

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

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

#### **Article 7 Payment of Taxes**

7.1 Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

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

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

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

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

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

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

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

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**8.2 Termination for Default; Remedies.**

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

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

3.5	Submitting False Claims.	10.4	Nondisclosure of Private, Proprietary or Confidential Information
4.5	Assignment	10.10	Alcohol and Drug-Free Workplace
Article 5	Insurance and Indemnity	10.13	Working with Minors
Article 7	Payment of Taxes	11.10	Compliance with Laws

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

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

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

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the

maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

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

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

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

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

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

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

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Except for Contractor's Audit Documentation, as defined herein below which shall remain the exclusive property of Contractor, 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. "Audit Documentation" shall mean all records related to the Agreement, excluding financial records that report Contractor's professional hours and expenses, that are required by professional standards or Contractor's internal policies to support the services performed under the Agreement. Examples of Audit Documentation are audit programs, analysis, memoranda, letters of confirmation and representation, extract or copies of City documents, and schedules or commentaries prepared by or obtained by Contractor. Audit Documentation may be in paper form, electronic form, or other media.

## **Article 9      Rights In Deliverables**

9.1      **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents, with the exception of Audit Documentation as defined in Section 8.4.2, prepared by Contractor or its subcontractors, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

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

## **Article 10      Additional Requirements Incorporated by Reference**

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



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

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

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

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

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

10.5 **Nondiscrimination Requirements**

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

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

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

**10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least 10% of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

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

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

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

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

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved

by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

**10.12 Slavery Era Disclosure.** Contractor shall comply with San Francisco Administrative Code Chapter 12Y, San Francisco Slavery Era Disclosure Ordinance, including but not limited to Contractor's affirmative duty to research and disclose evidence of Contractor, its parent or subsidiary entity, or its Predecessor Company's Participation in the Slave Trade or receipt of Profits from the Slave Trade. Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.

10.13           **Reserved. (Working with Minors)**

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

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

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context

would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

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

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

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

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

10.18.1 Contractor shall comply with San Francisco Environment Code Chapter 8, which provides that except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. Contractor is subject to the penalty and enforcement provisions of Chapter 8.

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

**Article 11 General Provisions**

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

To City: Joyce Kimotsuki, Contracts Manager  
Controller's Office  
City & County of San Francisco  
City Hall, Room 306  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
[Joyce.Kimotsuki@sfgov.org](mailto:Joyce.Kimotsuki@sfgov.org)

To Contractor: Cynthia Pon, COO/Partner  
Macias Gini & O'Connell LLP  
2121 N. California Blvd., Suite 750  
Walnut Creek, CA 94596  
[cpon@mgocpa.com](mailto:cpon@mgocpa.com)

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

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

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

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

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

**11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its

obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

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

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

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

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

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

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

11.13 **Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated December 15, 2015. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

## **Article 12 MacBride And Signature**

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

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

**CITY**

Recommended by:

\_\_\_\_\_  
Todd Rydstrom  
Deputy Controller  
Controller's Office

Approved as to Form:

Dennis J. Herrera  
City Attorney

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

Gus Guibert  
Deputy City Attorney

Approved:

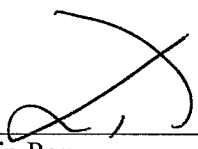
\_\_\_\_\_  
Jaci Fong  
Director of the Office of Contract Administration,  
and Purchaser

**Appendices**

- A: Scope of Services
- B: Calculation of Charges
- C: Auditor Engagement Letter

**CONTRACTOR**

Macias Gini and O'Connell LLP

  
\_\_\_\_\_  
Cynthia Pon  
COO/Partner  
2121 N. California Blvd., Suite 750  
Walnut Creek, CA 94596

City vendor number:51502



## **Appendix A Services to be Provided by Contractor**

This scope of work is a general guide to the work the City expects to be performed, and is not a complete listing of all required or desired services.

### **1. OVERVIEW OF SERVICES**

Under the City and County of San Francisco Charter (City Charter), the Controller serves as the chief fiscal officer of the City and County of San Francisco (City).

In compliance with City Charter Section 2.115 and California Government Code Sections 25250 and 25253, the City is required to have its annual financial statement audits performed by independent public accounting firms.

City Charter Section 9.117 calls for the establishment of an Audit Committee of the Board of Supervisors (Committee). The Board of Supervisors Government Audit and Oversight Committee serves as that Committee. The role of the Committee is to:

- a) Maintain a direct and separate line of communication between the Board of Supervisors and the independent auditor;
- b) Meet with the independent auditor to review the audited annual financial statement and the auditor's report on such matters as the quality and depth of management and compliance;
- c) Recommend appropriate action to be taken by the Board of Supervisors to implement recommendations contained in the audit report;
- d) Follow up, as necessary, to ensure that approved recommendations are promptly implemented; and
- e) Perform other duties as assigned by the Board of Supervisors.

Upon completion of the annual audits, the Comprehensive Annual Financial Report (CAFR) and corresponding management letters are provided to the Committee by the Controller's Office.

### **2. ROLES AND RESPONSIBILITIES**

2.1 In performing the services provided for in this Agreement, Contractor's Liaison will be Katherine Lai or Cynthia Pon. The Controller's Office Liaison will be Carmen LeFranc or Jocelyn Quintos.

2.2 Through the services and deliverables required under this Agreement, the Contractor shall be expected to successfully meet all audit staffing, timeline, budget, and work product goals and objectives on an annual basis for the term of the Agreement. The Contractor's Liaison (Katherine Lai or Cynthia Pon) shall manage the Contractor's Team to ensure that it completes all work and obligations described in this Agreement.

2.3 The Controller's Office Liaison, in coordination with reporting entity (City department) representatives, will oversee the work of the Contractor, handle all contract administration matters and approve contract payments.

2.4 The Controller's Office Liaison, in his/her sole discretion, has the right to approve or disapprove Contractor's personnel assigned to perform the services under this Agreement at any time throughout the term of this Agreement. The City shall have the right to interview and review the qualifications of any new personnel proposed by the Contractor. Any change to Contractor's managerial (from partner through senior level) personnel must be approved in writing by the City at least fourteen (14) days in advance of assignment of such personnel by the Contractor. Such approval by the City shall not be unreasonably withheld.

2.5 The City will arrange for office space, equipment, internet access and access to the City's online financial system, as determined and approved by the City.

2.6 The City assumes that financial statements and notes will be developed by the City. The Contractor may then be asked to produce the final published financial statements.

2.7 In its sole and absolute discretion, the City will make appropriate staff available to provide assistance to the Contractor. Such assistance may include coordinating the audit field work, identifying locations of required records and documentation, preparing and/or obtaining listings of account balances/transactions, providing reasonable detailed analysis and reconciliation of various accounts being audited and other such tasks which will serve to speed the conduct of the services.

2.8 The City expects that the Contractor will use the City's online financial system to the fullest extent possible to research transactions and analyze account balances in conjunction with their audits.

2.9 The Controller's Office Audits Division may make its internal audit reports available to Contractor and will, to the extent possible, provide staff resources if, in the City's sole and absolute discretion, critical problems are identified by the Contractor, which require staff resources beyond the scope of this Agreement.

2.10 The Contractor shall serve as the City's principal auditor and make reference to the work performed by the other audit firms in their audit opinion on the City's basic financial statements.

### **3. SUMMARY OF SERVICE GROUPS**

The Contractor shall perform annual audits of the financial statements for the following service Groups (also known as reporting entities or components) for fiscal year ending June 30, 2016, June 30, 2017, June 30, 2018, June 30, 2019, June 30, 2020, June 30, 2021, and June 30, 2022.

- |         |  |
|---------|--|
| Group 1 | The City's Comprehensive Annual Financial Report (CAFR), General City, Single Audit, and other funds |
| Group 2 | Employees' Retirement System   |
| Group 3 | Successor Agency to the Redevelopment Agency and Financing Authority (Successor Agency)              |

Group 7	Port of San Francisco
Group 8	San Francisco Finance Corporation
Group 11	Various California Project Grants
Group 12	Retiree Health Benefit Trust

More details regarding the services specific to each Group are in subsequent sections of this Appendix.

#### **4. ANNUAL GRANT AUDIT SERVICES**

The Contractor shall provide annual grant audit services, as determined by the City, as follows:

Coordinate the planning and development of audit procedures and testing methods, review these methods with the City's other Contractors and/or the Controller's Office, and, if deemed necessary by the City, review these methods with the granting agencies. Examination of non-governmental secondary recipients is specifically excluded from this Agreement. The Contractor shall assist the City in responding to inquiries from the governmental agencies on issues related to the audits for which they are responsible.

#### **5. ANNUAL FINANCIAL STATEMENT AUDIT SERVICES**

The Contractor shall provide annual financial statement audit services, as determined by the City, for each Group covered by this Agreement as follows:

5.1 Conduct annual financial statement audit services in accordance with generally accepted auditing standards and requirements as promulgated by American Institute of Certified Public Accountants (AICPA), the Governmental Accounting Standards Board (GASB), the Single Audit Act Amendments of 1996, and the federal Office of Management and Budget (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* set forth in Title 2 CFR, Subtitle A, Chapter II, Part 200 (Uniform Guidance) (if applicable), and related pronouncements with the objective of having the Contractor express an independent opinion regarding the financial position, changes in financial position and cash flows, where applicable, of the Groups (financial statements) covered by this Agreement.

5.2 Report on internal control related to the financial statements and compliance with applicable major federal programs, laws, regulations, and requirements (including Statement on Auditing Standards 115), as well as the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with the Single Audit Act Amendments of 1996, OMB Uniform Guidance (if applicable) and related governmental audit standards and pronouncements.

5.3 Ensure its examinations comply with the requirements of the Single Audit Act Amendments of 1996 and OMB Uniform Guidance (if applicable) and related pronouncements, relating to the Federal award programs listed in the City's and the Successor Agency's Schedules of Expenditures of Federal Awards.

5.4 Coordinate the planning and development of audit procedures and testing methods, review these methods with the City's other Contractors and/or the Controller's Office,

and, if deemed necessary by the City, review these methods with the Federal cognizant agency. Examination of non-governmental secondary recipients is specifically excluded from this Agreement. The Contractor shall assist the City in responding to inquiries from the Federal agencies on issues related to the audits for which they are responsible.

5.5 Review the Annual Reporting Package (ARP), if provided by the reporting entity for submission to the Controller's Office to assist in the preparation of the City's Comprehensive Annual Financial Report (CAFR).

5.6 Analyze the differences between the Generally Accepted Accounting Procedures (GAAP) basis and the budget basis of accounting and of the components of the budget basis fund equity.

5.7 Issue reports on the Employees' Retirement System, the Port of San Francisco, and the San Francisco Finance Corporation's basic financial statements based on the examination of the individual opinion units. These financial statements shall include such explanatory footnotes as considered necessary to disclose all material items. All reports shall be issued in accordance with the timelines developed in the City's closing schedule. Approximate key dates are listed below in Section 8, Timing of the Work.

5.8 Issue a report on the Successor Agency to the Redevelopment Agency's financial statements, which include the City and County of San Francisco Redevelopment Financing Authority as a blended component unit, on the examination of the Successor Agency's opinion units. The financial statements, and all related reports, shall:

- i. Include the basic financial statements;
- ii. Include explanatory footnotes as considered necessary to disclose all material items; and
- iii. Be issued in accordance with the timelines developed in the City's closing schedule, as detailed below in Section 8, Timing of the Work.

5.9 Perform certain agreed-upon procedures relating to the City's calculation of its appropriations limit in accordance with Article XIII B of the California Constitution. The Contractor shall provide a report documenting the results of the agreed-upon procedures.

5.10 Work with the Controller's Office and reporting entities covered by this Agreement to address any critical reporting issues and to review the format of the financial statements to ensure compliance with or implementation of new Governmental Accounting Standards Board Statements.

5.11 The Controller's Office and/or reporting entities may use the Contractor's opinion on the basic or on individual financial statements, as applicable, when the Contractor is not associated with the official statements for public debt issuance provided that the Controller's Office reproduces the entire document associated with the Contractor's opinion.

## 6. MANAGEMENT LETTERS

In conjunction with the annual financial audits, the Contractor shall prepare a management letter for Groups 1, 2, 3, 7, 8, 11, and 12 (combined), covered by this Agreement per Appendix C to this Agreement.

## 7. GENERAL APPROACHES TO WORK

The key element of effective audit planning is a thorough understanding of the City's operations. This includes operating environment, accounting and internal accounting control structure, and financial operations. The Contractor shall develop a detailed understanding of these elements to effectively identify the nature of significant account balances/transaction classes, assess risk, and design audit tests.

The Contractor's specific approaches to the services under this Agreement are described in Appendices C to this Agreement.

## 8. GROUPS

In addition to the services and approaches described in Sections 4, 5, 6 and 7, the Contractor shall provide services specified for the groups under this Agreement, as detailed below.

### 8.1 Group 1: The City's Comprehensive Annual Financial Report (CAFR), General City, Single Audit, and other funds

The Contractor shall perform a financial audit of the General City and other funds (SFMC and TIDA) in accordance with GAAS as promulgated by the AICPA and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States for the purpose of expressing opinions on the fair presentation of the City's opinion units, in conformity with GAAP. In addition, the Contractor shall perform certain limited procedures involving required supplementary information mandated by the Governmental Accounting Standards Board as required by GAAS.

8.1.1 General City - General City refers to the City's Governmental Funds and all Internal Service Funds except the San Francisco Finance Corporation.

8.1.2 Comprehensive Annual Financial Report (CAFR) - The CAFR shall be prepared by the City according to the financial reporting requirements of the Governmental Accounting Standards Board (GASB) Statement No. 34, Basic Financial Statements – and Management's Discussion and Analysis (MD&A) – for State and Local Governments (GASB 34), as amended.

This report is divided into three sections:

- *The Introductory Section* includes information about the organizational structure of the City, the City's economy, major initiatives, status of City services, and cash management.

- *The Financial Section* is prepared in accordance with the GASB 34 requirements, including MD&A, the Basic Financial Statements including notes and the other Required Supplementary Information. The Basic Financial Statements include the government-wide financial statements that present an overview of the City's entire financial operations and the fund financial statements that present the financial information of each of the City's major funds, as well as non-major governmental, proprietary and fiduciary funds. Also included in this section is the Independent Auditors' Report on the Basic Financial Statements.
- *The Statistical Section* includes tables containing historical financial data, debt statistics, and miscellaneous social and economic data of the City that are of interest to potential investors in our bonds and to other readers.

8.1.2.1 The Contractor shall assist the City in meeting the requirements of the Government Finance Officers Association's (GFOA's) Certificate of Achievement for Excellence in Financial reporting program for the CAFR.

8.1.2.2 The Basic Financial Statements shall include those entities as set forth in Note 1, in the 2015 CAFR, which are required to be included in the City's financial statements in accordance with the Governmental Accounting Standards Board Section 2100 "defining the reporting entity".

8.1.3 Single Audit - Examinations shall comply with the requirements of the Single Audit Act Amendments of 1996 and OMB Uniform Guidance and related pronouncements, relating to the Federal award programs listed in the City's Schedule of Expenditures of Federal Awards. The Contractor shall coordinate the planning and development of testing methods, review these methods with the Controller's Office and, if deemed necessary by the City, review these methods with the Federal cognizant agency.

8.1.4 Treasure Island Development Authority (TIDA) Fund - TIDA is a nonprofit public benefit corporation. TIDA was authorized in accordance with the Treasure Island Conversion Act of 1997 and designated as a redevelopment agency pursuant to Community Redevelopment Law of the State of California. TIDA is governed by seven commissioners who are appointed by the Mayor, subject to confirmation by the City's Board of Supervisors. The specific purpose of TIDA is to promote the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the property known as Naval Station Treasure Island. This non-enterprise entity is included in the City's Basic Financial Statements as a discretely presented component unit.

8.1.5 CAFR Report Preparation – The Contractor shall be responsible for CAFR report preparation and version control management prior to City's reproduction.

## **8.2 Group 2: Employees Retirement System**

The City Charter provides for this single-employer defined benefit pension plan, which covers substantially all employees of the City and County of San Francisco and certain classified employees of the San Francisco Community College and Unified School Districts.

This non-enterprise entity is reported in the City's Basic Financial Statements as a Pension and Other Employee Benefit Trust Fund.

### **8.3 Group 3: Successor Agency to the Redevelopment Agency and Financing Authority**

Successor Agency to the Redevelopment Agency of the City and County of San Francisco (The Successor Agency) – On June 28, 2011, Assembly Bill X1 26 (AB X1 26) was enacted. This legislation is referred to herein as the Redevelopment Dissolution Law. On December 29, 2011, the California Supreme Court upheld the constitutionality of AB X1 26 and all redevelopment agencies in California were dissolved by operation of law effective February 1, 2012. Based upon the nature of the Successor Agency's custodial role, the Successor Agency is reported in a fiduciary fund (private-purpose trust fund).

In addition to the audit of the basic financial statements of the Successor Agency, the report issued for the Successor Agency must include any Supplementary Information, and the Single Audit Report (if applicable).

### **8.4 Group 7: Port of San Francisco (Port)**

In 1968, the City voters approved a proposition to accept the transfer of the Harbor of San Francisco from the State of California under the terms and conditions set forth in California Statutes of 1968, Chapter 1333. An Enterprise Fund was established in 1969, under the direction of the Port Commission. A five-member Port Commission is responsible for the operation, development and maintenance of the Port.

### **8.5 Group 8: San Francisco Finance Corporation**

The San Francisco Finance Corporation (Finance Corporation) was created in 1990 by a vote of the electorate to allow the City to lease-purchase \$20 million (plus 5% per year growth) of equipment using tax-exempt obligations. The funds of the Finance Corporation are held with a third party trustee. Although legally separate from the City, the Finance Corporation is reported as if it were part of the primary government because its sole purpose is to provide lease financing to the City. This non-enterprise entity is accounted for as an Internal Service Fund.

### **8.6 Group 11: State of California Project Grants for DOI, LTF and TDA**

The City and County of San Francisco receives grants from the Department of Insurance (DOI), Transportation Development Act Local Transportation Fund (LTF) and Transportation Development Act (TDA) Projects for Department of Public Works and the Municipal Transportation Agency. These grants are aimed at assisting the City and County to promote various socio-civic and government programs under the sponsorship of these government agencies.

Services shall be performed annually for each fiscal year covered by this Agreement for the City's miscellaneous grants/funds the City receives or manages, including Department of Insurance grants, Local Transportation Fund and Transportation Development Act Projects (entities covered by this Agreement). The Contractor's services shall be performed with the

objective of having the Contractor express an independent opinion regarding the financial condition and internal controls of the entities examined.

8.6.1 For the DOI grants, the Contractor shall perform an examination of the Statements of Source and Status of Cash and the related Statements of Budget and Cumulative Expenditures of the Automobile Insurance Fraud program and the Workers' Compensation Insurance Fraud Program. The Contractor shall issue the required audit reports as described in Appendices C, D, E, F, H, and I.

8.6.2 For the LTF, the Contractor shall perform an examination of the financial statements of the respective fund in accordance with the guidelines of the TDA – Statutes and California Code of Regulations. The Contractor shall issue the required reports including the Report on Compliance with Regulations Applicable to the Transportation Development Act Local Transportation Fund.

8.6.3 For the TDA Article III Projects of the Department of Public Works and the Municipal Transportation Agency, the Contractor shall perform an examination of the financial statements of the respective projects in accordance with the guidelines of the TDA – Statutes and California Code of Regulations. The Contractor shall issue the required reports including the Report on Compliance with Regulations Applicable to the Transportation Development Act Article III Projects.

#### 8.6.4 Key Audit Procedures for Group 11

##### 8.6.4.1 Audit Procedures for Grant Funds:

- Testing internal controls and compliance with grant requirements.
- Substantively testing grant cash receipts, and expenditures incurred.
- Reviewing whether there were expenditures incurred that should have been disallowed, in accordance with the definitions provided by the DOI.

##### 8.6.4.2 Audit Procedures for Transportation Funds:

- Testing of compliance with the provisions of the TDA, and other applicable laws and regulations, and grant agreements.
- Substantive testing of grant receipts and disbursements for expenditures.
- Reviewing of propriety of reserved fund balances.

### **8.7 Group 12: Retiree Health Benefit Trust**

Group 12 involves performing an audit to account for the City's Post Employment Health Benefits for covered employees. This fund is currently referred as the Retiree Health Benefit Trust Fund.



## **9. TIMING OF THE WORK**

9.1 The Contractor shall factor in review streamlining (concurrent review) processes for the reports of the Groups under this Agreement to minimize delays and meet the key dates specified in Appendix C.

9.2 The Contractor shall ensure sufficient communications with the City to appropriately plan and schedule completion of processes and milestones to ensure key dates in Appendix C-3 are met, including document version control and word processing.

9.3 Specific key dates shall be included in engagement letters executed by Contractor and the City. Any changes to the key dates shall require advance written approval by the City.

## **10. AS-NEEDED AUDITING AND ACCOUNTING SERVICES**

The Contractor may be requested to perform as-needed auditing and accounting services in accordance to RFP#CON2015-25, Section 2.7 As-needed Accounting and Audit-Related Services . The City will identify such projects and work with the Contractor to define the scope of tasks to be performed. The Contractor may be asked to prepare an engagement letter stating its approach to the project; the methodology that will be employed; the lead personnel and staff that will be assigned; the time it will take to perform the work by staff level; the delivery date of the project deliverables; and the estimated cost to perform the project by staff level.

The hourly staff rates specified in Appendix B will automatically be the rates used for as-needed accounting and auditing services, unless special expertise is required for which a separate fee will be negotiated.

**Appendix B  
Calculation of Charges**

In accordance with Section 3 of this Agreement, the Contractor's total compensation under this Agreement is detailed below, inclusive of all costs and meetings required to complete all work specified in Appendix A. In no event shall the total costs under this Agreement exceed the amount provided in Section 3 of this Agreement.

**Payment Requests** should be sent to:  
[CentralFinance@sfgov.org](mailto:CentralFinance@sfgov.org)

**Insurance Documentation** should be sent to:  
[CentralContracts@sfgov.org](mailto:CentralContracts@sfgov.org)

Payment will be made by City to Contractor within 30 days after the City has received Contractor's payment request, provided that:

- 1) Contractor's payment request clearly identifies the services that have been performed in accordance with the Payment Request Schedule below;
- 2) The City has accepted as satisfactory, in the City's sole and absolute discretion, the services rendered by the Contractor to the City in accordance with this Agreement;
- 3) Insurance documentation is current in accordance with Section 5 of the Agreement; and
- 4) Contract Monitoring Division Subcontractor Payment paperwork has been submitted in accordance with Section 4 of the Agreement (if applicable).

**Fees by Group**

Contractor and City agree that the total fees by Group shall not exceed the following:

Group #	Description	FYE 6/30/16	FYE 6/30/17	FYE 6/30/18	FYE 6/30/19	FYE 6/30/20	FYE 6/30/21	FYE 6/30/22	Total
Group 1	The City's Comprehensive Annual Financial Report (CAFR), General City, Single Audit, and other funds	\$666,000	\$715,950	\$766,065	\$766,065	\$766,065	\$766,065	\$766,065	\$5,212,275
Group 2	Employees' Retirement System (ERS)	\$114,050	\$122,605	\$131,185	\$131,185	\$131,185	\$131,185	\$131,185	\$892,580
Group 3	Redevelopment Agency and Financing Authority/Successor Agency to RDA (beg. FYE 12)	\$99,600	\$107,066	\$114,294	\$114,294	\$114,294	\$114,294	\$114,294	\$778,136
Group 7	Port of San Francisco	\$104,050	\$111,855	\$119,685	\$119,685	\$119,685	\$119,685	\$119,685	\$814,330
Group 8	San Francisco Finance Corporation	\$20,270	\$21,790	\$23,315	\$23,315	\$23,315	\$23,315	\$23,315	\$158,635
Group 11	Department of Insurance	\$24,550	\$26,385	\$28,230	\$28,230	\$28,230	\$28,230	\$28,230	\$192,085
	Local Transportation Fund and Transportation Development Act Projects	\$19,500	\$20,960	\$22,427	\$22,427	\$22,427	\$22,427	\$22,427	\$152,595
Group 12	Retiree Health Benefit Trust	\$40,000	\$43,000	\$46,010	\$46,010	\$46,010	\$46,010	\$46,010	\$313,050
<b>Subtotal</b>		\$1,088,020	\$1,169,611	\$1,251,211	\$1,251,211	\$1,251,211	\$1,251,211	\$1,251,211	\$8,513,686
N/A	As Needed Accounting and Auditing Services	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$875,000
<b>Total Fees</b>		\$1,213,020	\$1,294,611	\$1,376,211	\$1,376,211	\$1,376,211	\$1,376,211	\$1,376,211	\$9,388,686

Any services by the Contractor requiring payment above these amounts shall require a modification to the Agreement per Section 11.5 of the Agreement.

**Hourly Rates**

Hourly rates for as needed auditing and accounting services and for work performed under this Agreement are as follows:

Level	FYE 6/30/16	FYE 6/30/17	FYE 6/30/18	FYE 6/30/19	FYE 6/30/20	FYE 6/30/21	FYE 6/30/22
Engagement Partner/Director-In-Charge	\$321	\$343	\$365	\$365	\$365	\$365	\$365
Client Services Director/Technical Reviewer	\$321	\$343	\$365	\$365	\$365	\$365	\$365
Directors	\$265	\$283	\$301	\$301	\$301	\$301	\$301
Senior Managers/IT Senior Consultants	\$227	\$242	\$257	\$257	\$257	\$257	\$257
Healthcare Consultant/Actuarial Consultant	\$206	\$220	\$234	\$234	\$234	\$234	\$234
Managers/IT Consultants	\$206	\$220	\$234	\$234	\$234	\$234	\$234
Engagement Supervisors/Supervising Seniors	\$180	\$192	\$204	\$204	\$204	\$204	\$204
Senior Associates	\$150	\$160	\$170	\$170	\$170	\$170	\$170
Experienced Associates	\$124	\$132	\$140	\$140	\$140	\$140	\$140
Staff Associates	\$107	\$114	\$121	\$121	\$121	\$121	\$121
Administrative Assistants	\$78	\$83	\$88	\$88	\$88	\$88	\$88

## APPENDIX C – Auditor Engagement Letter

This Appendix C to the Agreement between Macias Gini & O'Connell LLP (MGO) and the City and County of San Francisco sets forth additional terms and conditions regarding professional services that MGO will provide.



A new breed  
of professional  
services firm

Sacramento  
Walnut Creek  
San Francisco  
Oakland  
Los Angeles  
Century City  
Newport Beach  
San Diego

We are pleased to confirm our understanding of the services we are to provide the City and County of San Francisco (City) for the years ending June 30, 2016 through 2022. We will audit the financial statements of the governmental activities, the business-type activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the basic financial statements, of the City as of and for the years ending June 30, 2016 through 2022. Our report on the City's basic financial statements will make reference to the auditors' reports on the City's individual funds and component units not audited by Macias Gini & O'Connell LLP (MGO).

In addition to our audit of the basic financial statements of the City, we will also perform the following:

- Audit and separately report on the individual financial statements of the San Francisco City and County Employees' Retirement System, the Successor Agency to the Redevelopment Agency, Port of San Francisco, the San Francisco Finance Corporation, and the Retiree Health Benefit Trust.
- Audit and separately report on compliance with federal award programs in accordance with Office of Management and Budget (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* set forth in Title 2 CFR, Subtitle A, Chapter II, Part 200 (Uniform Guidance).
- Agreed-upon procedures to review compliance with appropriations limit requirements of Section 1.5 Article XIII B of the California Constitution (commonly referred to as the Gann Limit) in accordance with the procedures agreed to management and recommended by the California Committee on Municipal Accounting (as presented in the CCMA White Paper titled *Agreed-upon Procedures Applied to the Appropriations Limitation Prescribed by Article XIII B of the California Constitution*).
- Audit and separately report on the Statements of Source and Status of Cash and the related Statements of Budget and Cumulative Expenditures of the Automobile Insurance Fraud program and the Workers' Compensation Insurance Fraud Program that are funded by the State of California Department of Insurance grants.
- Audit and separately report on the financial statements of the Local Transportation Fund and on compliance in accordance with applicable statutes, rules and regulations of the Transportation Development Act (TDA), including section 6661 of Title 21 of the California Administrative Code.
- Audit and separately report on the financial statements of TDA grant funds from the Metropolitan Transportation Commission and on compliance with applicable statutes, rules and regulations of the Transportation Development Act (TDA), including section 6664 of Title 21 of the California Code of Regulations, and the allocation instructions and resolutions of the Metropolitan Transportation Commission.

Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the City's basic financial statements. Such information, although not a part of the

basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the City's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- Management's Discussion and Analysis
- Pension Plans – Schedule of the City's Proportionate Share of the Net Pension Liability
- Pension Plans – Schedule of Changes in Net Pension Liability and Related Ratios
- Pension Plans – Schedule of the Employer Contributions
- Other Postemployment Healthcare Benefits – Schedules of Funding Progress and Employer Contributions

We have also been engaged to report on supplementary information other than RSI that accompanies the City's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statements as a whole:

- Combining and individual fund financial statement schedules
- Schedule of expenditures of federal awards

The City's Comprehensive Annual Financial Report (CAFR) will also include introductory and statistical sections prepared by the City that will not be subjected to the auditing procedures applied in our audit of the financial statements, and our auditor's report will not provide an opinion or any assurance on that other information.

**AUDIT TIMING**

The City will provide all records ready for audit and all management personnel available to meet with the auditor's personnel no later than July 1 for interim work, and September 1 for final fieldwork. The following are key dates in connection with the annual audits to be performed for each fiscal year covered by this Agreement, as applicable. A similar time schedule will be developed with the Controller's Office for audits of future fiscal years. Any changes to the key dates shall require advance written approval by the City.

Audit Plan to be presented to the Board Government Audit and Oversight Committee by or before ..... July 31  
 Interim work to be complete ..... July 31  
 Final field work to begin on or after ..... August 1  
 Financial Statements for the various reporting entities to be issued ..... October 21

**AUDIT OBJECTIVES**

The objective of our audit is the expression of opinions as to whether the City's basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph

when considered in relation to the financial statements as a whole. The objective also includes reporting on—

- Internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance).

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will include a paragraph that states that (1) the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (2) the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. The Uniform Guidance report on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of the Uniform Guidance, and will include tests of accounting records, a determination of major program(s) in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express such opinions. We will issue written reports upon completion of our single audit. Our reports will be addressed to the Mayor and the Board of Supervisors of the City. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions on the financial statements or the single audit compliance opinions are other than unmodified, we will discuss the reasons with management in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or we may withdraw from the engagement.

## **AUDIT PROCEDURES—GENERAL**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements

or major programs. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention. We will include such matters in the reports required for a single audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from the City's attorneys as part of the engagement, and they may bill the City for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from management about management's responsibilities for the financial statements; schedule of expenditures of federal awards; federal award programs; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

#### **AUDIT PROCEDURES—INTERNAL CONTROL**

Our audit will include obtaining an understanding of the government and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by the Uniform Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and the Uniform Guidance.

#### **AUDIT PROCEDURES—COMPLIANCE**

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with provisions of applicable laws, regulations, contracts, and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with applicable federal statutes, regulations, and the terms and conditions of federal awards applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the City's major programs. The purpose of these procedures will be to express an opinion on the City's compliance with



requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

## **MANAGEMENT RESPONSIBILITIES**

Management is responsible for (1) establishing and maintaining effective internal controls, including internal controls over federal awards, and for evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. Management is also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal awards, and all accompanying information in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations (including federal statutes) and the provisions of contracts and grant agreements (including award agreements).

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. Management is also responsible for providing us with (1) access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements, (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance, (3) additional information that we may request for the purpose of the audit, and (4) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Management's responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information. Management's responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Management is responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Management's responsibilities include informing us of their knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, management is responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, or abuse that we report. Additionally, as required by the Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a separate corrective action plan.

Management is responsible for identifying all federal awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal awards (including notes and noncash assistance received) in conformity with the Uniform Guidance. Management agrees to include our report on the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. Management also agrees to include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes our report thereon. Management's responsibilities include

acknowledging to us in the written representation letter that (1) management is responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) management believes the schedule of expenditures of federal awards, including its form and content, is stated fairly in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) management has disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

Management is also responsible for the preparation of the other supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. Management agrees to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. Management also agrees to include the audited financial statements with any presentation of the supplementary information that includes our report thereon. Management's responsibilities include acknowledging to us in the written representation letter that (1) management is responsible for presentation of the supplementary information in accordance with GAAP; (2) management believes the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) management has disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this Appendix. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. Management is also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as management's planned corrective actions, for the report, and for the timing and format for providing that information.

Management agrees to assume all management responsibilities relating to the financial statements, schedule of expenditures of federal awards, and related notes, and any other nonaudit services we provide, if applicable. Further, management agrees to oversee any nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.

## **ENGAGEMENT ADMINISTRATION**

We may from time to time, and depending on the circumstances, use third-party service providers in serving the City. We may share confidential information about the City with these service providers, but remain committed to maintaining the confidentiality and security of the City's information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of the City's personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of the City's information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of the City's confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, management will be asked to provide consent prior to the sharing of the City's confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

We understand that City employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of

prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with management the electronic submission and certification. If applicable, we will provide copies of our report for management to include with the reporting package management will submit to pass-through entities. The Data Collection Form and the reporting package must be submitted within the earlier of 30 calendar days after receipt of the auditor's reports or nine months after the end of the audit period.

We will provide copies of our reports to the City; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of Macias Gini & O'Connell LLP (MGO) and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to the City's cognizant agency or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify management of any such request. If requested, access to such audit documentation will be provided under the supervision of MGO personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of seven years after the report release date or for any additional period requested by the City's cognizant agency. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation. Upon expiration of the seven-year period, MGO will be free to destroy our records related to this engagement. However, MGO does not keep any original client records, so we will return those to management at the completion of the services rendered under this engagement. When records are returned to management, it is management's responsibility to retain and protect the records for possible future use, including potential examination by any government or regulatory agencies.

In connection with this engagement, we may communicate with management or others via e-mail transmission. As e-mail can be intercepted and read, disclosed, or otherwise used or communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed and only to such parties, we cannot guarantee or warrant that e-mail from us will be properly delivered and read only by the addressee. Therefore, we specifically disclaim and waive any liability or responsibility whatsoever for interception or unintentional disclosure or communication of e-mail transmissions, or for the unauthorized use or failed delivery of e-mail transmitted by us in connection with the performance of this engagement. In that regard, management agrees that we shall have no liability for any loss of damage to any person or entity resulting from the use of e-mail transmissions, including any consequential, incidental, direct, indirect, or special damages, such as loss of revenues or anticipated profits, or disclosure or communication of confidential or proprietary information.

With regards to the electronic dissemination of audited financial statements, including financial statements published electronically on the City's website, management understands that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

Professional and certain regulatory standards require us to be independent, in both fact and appearance, with respect to the City in the performance of our services. Any discussions that the City has with personnel of our firm regarding employment could pose a threat to our independence. Therefore, the City agrees to inform us prior to any such discussions that we can implement appropriate safeguards to maintain our independence.