

City and County of San Francisco

OFFICE OF CONTRACT ADMINISTRATION PURCHASING

**REQUEST FOR PROPOSAL
(RFP 83518)**

**Integrated Pest Management Service for City Owned
Buildings and Properties**

Pre-proposal Conference: August 24, 2007, 12:30 p.m.

Deadline For Submission: September 14, 2007, 2:00 p.m.

Request for Proposals 83518

Integrated Pest Management Service for City Owned Buildings and Properties

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- A. San Francisco Human Rights Commission Forms.
HRC Form 3: Non-Discrimination Affidavit.
HRC Form 5: HRC Employee Form.
- B. Standard Forms: Listing and Internet addresses of Forms related to Chapters 12B and 12C and 14B of the S.F. Administrative Code, business tax, employer identification number, and insurance.
- C. Sample Agreement Between The City and County of San Francisco and Contractor (form P-500).
- D. Sample Certificate of Insurance and Additional Policy Endorsements.

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Integrated Pest Management Service for City Owned Buildings and Properties

I. Introduction

The Office of Contract Administration (“Purchasing”) of the City and County of San Francisco (“City”) in collaboration with the San Francisco Department of the Environment (“SFDE”), intends to award contract(s) for the procurement of integrated Pest Management services.

IPM Ordinance

This Scope of Work and Request for Proposals (RFP) are part of a comprehensive Integrated Pest Management (IPM) Program for property owned by the City and County of San Francisco (City). Chapter 3 of the San Francisco Environment Code, hereafter referred to as the IPM Ordinance (See Web link for Chapter 3 of the Environment Code - Integrated Pest Management Ordinance): <http://www.municode.com/Resources/gateway.asp?pid=14134&sid=5>, restricts the use of chemical pesticides on City property in order to safeguard public health and protect the natural environment. The Contractor must comply with all sections of the IPM Ordinance. These include the preferred use of non-chemical methods, posting prior to and after use of pesticides, record keeping, data reporting, use of only those chemical controls included on the City’s Reduced Risk Pesticide List (See Web link for the 2006 San Francisco Reduced-Risk Pesticide List):

http://www.sfenvironment.com/aboutus/innovative/ipm/pest_list06/index.htm, preparation of written IPM plans, and submission of an exemption request and receipt of approval before use of pesticide products not on the list.

Integrated Pest Management Definition

Integrated Pest Management (IPM) is a decision-making process that utilizes regular monitoring to determine if and when treatments are needed, and to evaluate their effectiveness. IPM programs employ a mix of biological, cultural, mechanical/physical, educational, and least-toxic chemical strategies and tactics to keep pest numbers low enough to prevent intolerable damage or nuisance. Non-chemical methods and pest prevention are emphasized, and pesticides are used only as a last resort when other approaches prove insufficient. The goal of IPM is to achieve long-term, cost-effective, and environmentally sound pest control.

II. Contract Term

The contract period shall be for thirty–six (36) months. The initial term of this contract is the period from award execution date, through the last day of the month of the 36 consecutive month period, or approximately November 1, 2007 through October 31, 2010.

III. Contract Extension

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

III. Glossary of Terms

CCSF	City and County of San Francisco
CDPR	California Department of Pesticide Regulations
CSPCB	California Structural Pest Control Board
Contractor	Pest management company that wins the bid for this Request for Proposals
Facilities Manager	City employee designated as responsible for supervising Contractor's pest management activities for a particular facility
Firm	Firm submitting a bid for this Request for Proposals
IPM	Integrated Pest Management
IPM Ordinance	Chapter 3 of the Environment Code, City and County of San Francisco
OCA	Office of Contract Administration
Onsite personnel	Personnel who routinely visit pest management sites covered by this contract and either make pest management decisions or administer pest treatments
RFP	Request for Proposals
SFDE	San Francisco Department of the Environment
SFRRPL	San Francisco Reduced Risk Pesticide List
User department	Department or Office of the City and County of San Francisco

V. Scope of Work, Part A.

Citywide Integrated Pest Management Services

(Note: Proposer may Propose Part A, Part B, or both)

The Scope of Work is to be used as a general guide and is not intended to be a complete list of all work necessary to complete the project. The following are work tasks assumed necessary to provide Integrated Pest Management (IPM) Services to City owned buildings and properties.

General

The Contractor shall furnish all supervision, labor, materials, and equipment necessary to successfully implement a structural IPM program. When needed or appropriate, the Contractor shall also provide detailed, site-specific recommendations for structural and procedural modifications to aid in pest prevention.

All of the Contractor's services must fall within the IPM definition outlined above. The Contractor is to seek the cooperation of the building management and building occupants to ensure compliance with the City's IPM Ordinance and to effectively prevent and reduce pest productions in and around City buildings. In cases where the contractor deems such cooperation inadequate to successfully manage pests using IPM principles, the contractor will notify the department's IPM coordinator and/or the SFDE IPM Manager (Chris Geiger, 415-355-3759, chris.geiger@sfgov.org) in a timely fashion. Work sites are listed in the List of Pest Management Service Sites (A PDF file of the List of Pest Management Service Sites dated March 29, 2007 is attached). Some work sites may be located outside the City/County limits. The Contractor or Contractor's representative is also required to attend and participate in regularly scheduled meetings and activities – (see "Meetings and Site Visits Requirements", page 9).

The contractor shall provide only qualified pest management personnel with experience in the conduct of IPM programs. The Contractor shall provide the IPM Coordinator for the contracting department with the names of all pest management personnel who might be assigned to this contract, and pertinent information regarding their qualifications, experience and training. Any employee found unqualified by the IPM Coordinator for the position to which he/she is assigned will be removed by the Contractor and replaced immediately with the qualified employee, at no additional cost to the City.

Throughout the life of this contract, all personnel providing on-site pest management services must be appropriately licensed or certified by the California Department of Pesticide Regulation (CDPR) or the California Structural Pest Control Board (CSPCB) in accordance with California State law. In addition, Contractor must have:

- At least one person on staff available for performing vector control work, who holds a Category K license with the Department of Pesticide Regulation, and
- At least one person on staff available for animal trapping work, who holds a license for animal trapping with the Department of Fish and Game to deal with mammals other than rats or mice.

EcoWise Certification

The City & County of San Francisco gives point preferences to firms that are certified by EcoWise Certified, an independent third party certification of structural pest control services sponsored by the Association for Bay Area Governments. For more information, see www.ecowisecertified.org.

Pests Covered by this Contract

Pest management services covered by this contract include those that are regulated under a California Branch 2 (general pests) structural pest control license, and do not include services for wood destroying organisms, fumigation or landscaping.

The Contractor shall also adequately suppress rats and mice found inside and outside buildings. Individual vertebrates including feral cats, foxes, ground squirrel, opossums, raccoons, skunks, located indoors or outdoors, that are determined by the facility manager to be causing unacceptable property damage, nuisance or hazard, will also be the responsibility of the Contractor. Pick-up and proper disposal of dead vertebrates is also included in this scope of work. Finally, the control of mosquitoes for public health purposes on all public properties falls within the scope of this contract. The control of mosquitoes requires special licensing and coordination with the San Francisco Department of Public Health.

Other kinds of pests that appear in high numbers (such as feral pigeons and other pest birds), or that may be vectoring pathogens that pose potential health risks to humans (such as bats or ticks), may require special skills or licensing. The Contractor may be called upon to suppress or remove such pests under the Emergency or Special Services provisions of the contract. Such determination shall be made on a limited contract basis by the designated facility manager.

IPM Service Categories and Specifications

The Contractor is responsible for four general categories of IPM services: Short term service, ongoing service, emergency service and training and consultation service. The decision on which service category to employ rests with the facility manager.

1) Short-term IPM Service

This category addresses minor pest problems that can generally be solved in one or two service calls. It is best suited to small facilities with no history of chronic pest problems. Short-term IPM services are provided on an as-needed basis, and do not warrant preparation of a complete written IPM plan or intensive monitoring. In providing short-term IPM services, the Contractor will:

- ***Conduct an initial inspection*** of the facility.
- ***Prepare a brief written proposal*** to the building manager that summarizes the pest problem, population threshold for treatment, and the specific IPM methods to be used to solve the problem and prevent future occurrences. The Contractor may charge the “short-term rate” for preparation of the proposal.
- ***Implement the proposal*** after approval by the facility manager.
- ***Prepare service report forms:*** The Contractor’s representative performing the service shall complete, sign and date a service report form and return it to the facility manager’s office on the same day the service is performed or on the succeeding business day. The service report form should include a summary of the nature and extent of the pest problem, treatment measures taken, recommendations for pest proofing, and any other pertinent information. This form shall be signed off by the facility manager and a copy retained at the facility, along with any relevant monitoring forms.
- ***Charge under the “Short-term IPM Service”*** hourly rate as listed on the evaluation worksheet.
- ***Comply with all IPM Ordinance posting, recordkeeping, and other requirements.***

2) Ongoing IPM Service

This category of service addresses more complex or chronic pest problems. In providing ongoing IPM services, the Contractor will provide:

- ***Initial inspection:*** The Contractor shall offer to conduct initial inspections of all buildings or sites within thirty (30) days of implementing this contract. These inspections will be completed within 60 days of receiving agreement from the relevant facility managers. The purpose of this initial inspection is for the Contractor to evaluate the pest management needs of the premises and to discuss these needs with the user department representative. The contractor may charge the “short-term” hourly rate for this service.
- ***IPM plan preparation:*** Following the initial inspection, the Contractor shall develop a written IPM plan for each facility, which must be submitted to the user department representative for approval. The IPM plan shall include components described in the “Components of IPM Plans” section below.

- **IPM plan submission and approval:** The IPM Plan shall be submitted to the facility manager not more than ten (10) working days following the initial inspection. If the plan is rejected, the Contractor shall have three (3) working days to submit a revised Plan. Once the IPM plan is approved by the facility manager, it shall be the Contractor’s responsibility to carry out work according to the IPM Plan, and to file a copy of the final plan with SFDE.
- **Interim service schedule:** Pending approval of the IPM Plan and at the discretion of the facility manager, the Contractor may provide services at “short-term” hourly rates.
- **IPM plan revisions:** Each on-going IPM service plan shall be reviewed at least once every three years by both the facility manager and the Contractor, and renewed or adjusted as conditions warrant. Any changes in the IPM Plan must first receive the approval of the facility manager.
- **Service report form:** The service report form should be completed as described in short-term IPM services above. In addition, a copy of the form shall be placed in the Log Book at the conclusion of each service visit, along with a copy of the pest monitoring form.
- **Structural repairs and pest prevention:** If the Contractor has previously recommended sanitation or exclusion measures, and if the department has not yet fulfilled these recommendations, the Contractor shall notify the department of this situation in the service report. Thereafter, if the problem is not solved in a reasonable number of return visits due to the facility not following Contractor recommendations, the Contractor may contact SFDE to help mitigate the problem. (see “Pest Exclusion and Prevention”, page 9).
- **Compliance** is required with all IPM Ordinance requirements as described above.
- **Charges:** The contractor shall charge the “ongoing IPM service” rate as listed on the bid sheet – OR – a monthly flat rate negotiated with the facility manager. Negotiated flat rates must be based on the “ongoing IPM service” hourly rate and estimated service hours required. Materials costs may be included or charged separately at the facility manager’s discretion.
- **Pest log books:** The Contractor shall be responsible for maintaining a complete and accurate Pest Management Log Book at each facility that is served under the contract. The Log Book shall be updated at each visit by the Contractor. If the facility lacks a log book, the Contractor is responsible for providing one.

The Log Book shall contain at minimum the following items:

1. A copy of the IPM plan and/or service schedule for the building.
2. If applicable, a list of pesticides used, including trade name and active ingredients.
NOTE: only pesticides selected from the Reduced-Risk Pesticide List are authorized for use on City property.
3. Copies of sample labels and material safety data sheets (MSDS) for each pesticide product used.
4. (As appropriate) Pest Sighting Sheets, preferably in floor plan map format, that the Contractor posts in break rooms or other locations convenient to facility occupants. The Sheets are used to gather information on pest presence from building occupants. Contractor shall be responsible for posting and collecting the sheets.
5. The location of all traps and bait stations on the premises, preferably in map format. All traps and bait stations should be numbered.
6. Copies of all service report forms for the facility.

3) **Emergency and Special Services**

Emergency services are directed at urgent pest problems that must be addressed as soon as is practical. They are not “call backs” resulting from other routine services provided under the Contract. Except for holidays or other “shut down” periods, the Contractor is expected to address emergency problems within 24 hours of the service call. The Contractor may charge the “emergency rate” for these services but must

notify the requesting department that the emergency rate applies before performing the service. In the event that such services cannot be completed within the above-stipulated time frame, the Contractor shall immediately notify the user department representative and indicate an anticipated completion date. Contractor will comply with all IPM Ordinance and recordkeeping requirements as described below.

Special services are those that require special skills, training, or licensing, and may utilize subcontractors for whose work the Contractor shall be accountable. Contractor will charge the “ongoing service rate” for facilities with completed IPM plans; other facilities will be charged the “short-term service rate.” In either case, contractor may charge the “emergency rate” if service requests are made less than 24 hours in advance.

4) Training and Consultation Services

The Contractor shall provide additional consultation, training, and technical support, by phone or in person, to City facilities managers, user department representatives, or the SFDE IPM Program Manager during City business hours (8-5). These services may be charged at the “training & consultation” hourly service rate in 5 minute increments. The Contractor must notify the City staff member requesting the service that the billing rate applies before providing the service. The training & consultation rate also applies for Contractor time spent in meetings in excess of 4 hours per month – (see “Meetings and Site Visit Requirements”, page 9).

Components of IPM Plans (for Ongoing Service Category)

The following components shall be included in all written IPM plans submitted to facilities managers for ongoing IPM services.

- **Management objectives:** Identify key pests to be controlled, level of control desired (thresholds) and areas of the facility requiring special attention.
- **Communication and accountability system:** Designate contact people and alternates at both the facility and at the Contractor’s company. Establish location of pest activity log book(s) at the facility. Establish procedure for Contractor to report facility maintenance or pest prevention needs to appropriate staff at the facility.
- **Schedule of service:** Describe expected schedule and duration of service visits required to meet management objectives.
- **Monitoring Program:** Describe monitoring approach, including the use of traps and/or inspections.
- **Description of IPM Methods and Products:** Summarize non-chemical IPM methods proposed. List city-approved pesticide products proposed for use in the program together with the rationale, proposed methods of use, and methods planned to minimize exposure. For each pesticide, list the product name, EPA registration number (if registered), specific building(s) and pests targeted, and where pesticide will be applied, for example, indoors, in wall voids, or outside.
- **Desirable Structural or Operational Changes:** Identify pest-proofing activities or modification of staff operational methods or timing that would improve pest management efforts, for example, caulking around pipes.
- **Record-keeping System:** Describe data to be collected and provide a sample monitoring form designed to track data on pest location, populations, harborage, trends in pest populations, status of previously suggested pest exclusion and prevention measures for which facility staff are responsible, and other relevant information.
- **Education and Training Activities:** List recommended education and training activities for facility staff that would increase their support for IPM activities.

Pesticide Application Restrictions

As a general rule, application of pesticides shall not occur unless monitoring indicates the presence of pests in that specific area. Preventive pesticide treatments are acceptable only in rare cases, where monitoring indicates that a potential insect or rodent infestation could occur, and with approval from the facility manager.

Under the IPM Ordinance, all chemical pesticides—with certain exceptions—are banned for use on City property EXCEPT those listed on the San Francisco Reduced Risk Pesticide List (SFRRPL). This list is updated annually. It is the Contractor's responsibility to be familiar with current version of the SFRRPL, and to comply with its limitations. The SFRRPL is available from the Dept. of the Environment or at:

http://www.sfenvironment.com/aboutus/innovative/ipm/pest_list06/index.htm

The Contractor shall fill out the required Exemption forms (described in the IPM Ordinance) when new or additional products are desired for use. These forms shall be submitted to the SFDE, whose approval is required before the requested products may be used. Pesticides needed to address an emergency situation for which non-pesticide methods are not feasible (Environment Code Section 307(e)) may be used without an approved exemption, but an exemption notification must be submitted within 72 hours of the application.

Posting and Notification Requirements

The Contractor must supply each facility with all pesticide application notification signage required under the IPM Ordinance. Signs shall contain the name and active ingredient of the pesticide product, the target pest, date of use, signal word indicating the pesticide's toxicity category, re-entry date/time for the treated area, and the name and contact phone number for the responsible facility manager. In the event of a spray application of a pesticide, the Contractor will be responsible for posting the treated area three (3) days prior and four (4) days following the application. Signage that may be required includes:

- Permanent indoor pesticide notification signs.
- Temporary indoor and outdoor notification signs.
- Pest Sighting Forms (see "Components of IPM Plans", page 7).

Pesticide Use Reporting Requirements

The Contractor shall provide, at no additional cost to the City, quarterly electronic pesticide use reports to the SFDE IPM Manager. These reports shall list all chemical and non-chemical pest control measures taken at each site. It is the Contractor's responsibility to insure electronic compatibility with the City's existing Pesticide Use Reporting database.

At the Contractor's discretion, reports may be submitted more frequently than quarterly. At minimum, these reports shall be submitted within one month of the end of each quarter, according to the following schedule:

<u>Reporting Period</u>	<u>Deadline for Report</u>
January 1 – March 31	May 1
April 1 – June 30	August 1
July 1 – September 30	November 1
October 1 – December 31	February 1

Meetings and Site Visit Requirements

The Contractor, or Contractor's representative approved by SFDE, is required to attend monthly (2 hour) scheduled meetings of the IPM Technical Advisory Committee, as well as occasional ad hoc meetings or site visits approved by the SFDE IPM Program Manager. For all of the above meetings, the Contractor must provide free of charge up to four (4) hours of his/her time per calendar month. Meetings in excess of 4 hours per month may be charged to the convening department at the "training & consultation" hourly service rate.

Pest Exclusion and Prevention

In general, structural modification or repairs for pest control are not the responsibility of the Contractor. However, the Contractor is responsible for communicating the need for such repairs to facilities managers (see Ongoing IPM Service specifications, page 5). The user department may opt to allow the Contractor to make minor IPM structural repairs at the "ongoing service" hourly rate plus materials costs, at a total cost not to exceed \$500 per incident. Examples include caulking cracks or screening holes when City personnel are not able to do so in a timely manner. Prior to embarking on such work, the Contractor must receive authorization in writing from the user department representative or other appropriate party.

Uniforms and Equipment

All personnel, while working in or on government-owned or leased premises, shall have at a minimum the Contractor's company name easily identifiable, affixed thereon in a permanent or semi-permanent manner. Additional personal protective equipment, required by State Law for the safe performance of work, must be determined and provided by the Contractor. Vehicles used by the Contractor must be clearly marked and identified in accordance with State and local regulations.

Price Structure

The Contractor will charge for pest management services based on the four hourly rates provided in the price proposal: short-term services, ongoing services, emergency services, and training and consultation services (see descriptions of services). These hourly rates do not include materials charges. City departments may be charged on a time and materials basis, or - for ongoing IPM services - may be charged a flat monthly office that has been negotiated with the user department using the "ongoing IPM service" hourly rate as a basis. The cost of materials shall not be marked up more than 30% above the price paid by the Contractor. *Note that this is not simply a "lowest proposerr" contract; the monthly pest management rate accounts for 20% of the evaluation of the proposal.*

Department of the Environment Contact

All required reports, pesticide exemption requests, and inquiries about the IPM Program shall be directed to:

Chris Geiger, Integrated Pest Management Program Manager
San Francisco Department of the Environment
11 Grove Street
San Francisco, CA 94102
Telephone: (415) 355-3759
FAX: (415) 554-6393
e-mail: chris.geiger@sfgov.org

V. Scope of Work, Part B.

Pest Management Services for Muni Coaches

(Note: Proposer may propose Part A, Part B, or both)

The Scope of Work is to be used as a general guide and is not intended to be a complete list of all work necessary to complete the project. The following are work tasks assumed necessary to provide Integrated Pest Management (IPM) Services to MUNI coaches.

General

The Contractor shall furnish all supervision, labor, materials, and equipment necessary to successfully implement an IPM program for bus and railway coaches belonging to San Francisco MUNI. The intent of this RFP is to improve upon, if possible, the pest control methods currently used to service MUNI coaches. By “improve” we mean any of the following: the use of less toxic products; methods resulting in lower exposure to workers, facility users, applicators, or the environment; lower quantities of product used or reduced frequency of use. Any “improvement” must be made while maintaining the level of pest control achieved with the current service plan; that is, maintaining a pest-free environment inside the MUNI coaches. When needed or appropriate, the Contractor shall also provide detailed recommendations for procedural modifications to aid in pest prevention.

The Contractor is to seek the cooperation of the facility management and staff to ensure compliance with the City’s IPM Ordinance. In cases where the contractor deems such cooperation inadequate to successfully manage pests under IPM principles, the contractor will notify the department’s IPM coordinator and/or the SFDE IPM Program Manager (Chris Geiger, 415-355-3759, chris.geiger@sfgov.org) in a timely fashion. The Contractor or Contractor’s representative is also required to attend and participate in regularly scheduled meetings and activities – (see “Meetings and Site Visit Requirements”, page 13).

Pests Covered by this Contract

Pest management services covered by this contract include those that are regulated under a California Branch 2 (general pests) structural pest control license. This contract applies only to pests found on MUNI coaches. Pest management in other city-owned properties or buildings that house MUNI coaches are the responsibility of the Citywide Pest Management Contractor (see Section II Scope of Work Part A. of this contract proposal).

Work Hours and Locations

Work will be performed between the hours of 8:00 p.m. and 3:00 a.m. without supervision. Sites of service are:

Woods Yard: 40 Tubbs Lane, San Francisco, CA, 94107
Kirkland Yard: 151 Beach Street, San Francisco, CA, 94133
Flynn Yard: 1940 Harrison Street, San Francisco, CA, 94133
Potrero Yard: 2500 Mariposa Street, San Francisco, CA, 94110
Presidio Yard: 875 Presidio Street, San Francisco, CA, 94115
Metro Yard: 2200 San Jose Avenue, San Francisco, CA, 94112
The Mint: 425 Geneva Avenue, San Francisco, CA, 94112

Description of Services Required

Expected level of service: In return for the monthly service charge, the Contractor is expected to provide effective, sustained suppression of all pests on MUNI coaches. Baseline services provided by the previous contractor were:

- Two applications of pesticide (gel formulation) per year for each coach.
- Pesticide applied to approximately 120 locations on 40 foot coaches and 160 locations on 60 foot coaches.
- 1,580 coaches total.

Proposers are encouraged to modify the above procedures to use less toxic products, reduce pesticide exposure to workers, facility users, applicators, and the environment, reduce the total quantities of product used, or reduce the frequency of use. Any improvement must be made while maintaining the level of pest control achieved with the current service plan; that is, maintaining a pest-free environment inside the MUNI coaches.

Unscheduled services: In the event that pest infestations are reported in a given coach before its regularly scheduled servicing, the Contractor must be available to provide extra treatments to that coach at no extra charge within a time period deemed reasonable by the MUNI IPM Coordinator.

IPM Plan: Within 15 working days of the effective date of the contract the Contractor must assemble an IPM plan that incorporates the following elements:

- *Management objectives:* Identify key pests to be controlled and level of control required.
- *Communication and accountability system:* Designate contact people at the Contractor's company. Establish location of pest activity log book(s) at the facility. Describe mechanism for Contractor to report routine needs and problems to MUNI staff.
- *Schedule of service:* Describe expected schedule and duration of service visits required to meet management objectives.
- *Monitoring Program:* Describe pest monitoring approach.
- *Description of IPM Methods and Products:* Summarize any non-chemical IPM methods proposed. List city-approved pesticide products proposed for use in the program together with the rationale, proposed methods of use, and methods planned to minimize exposure. For each pesticide, list the product name, EPA registration number (if registered), specific building(s) and pests targeted, and where pesticide will be applied.
- *Desirable Structural or Operational Changes:* Identify pest-proofing activities or modification of staff operational methods or timing that would improve pest management efforts.
- *Record-keeping System:* Describe data to be collected, with special attention to recordkeeping requirements of the IPM Ordinance. Provide a sample monitoring form designed to track treatments made, evidence of pest presence, status of previously suggested structural or operational changes for which City staff are responsible, and other relevant information. The monitoring form may be part of the service report form (see below).

IPM plan submission, approval, and revisions: The IPM plan must be approved by the MUNI IPM Coordinator before it is implemented. Once the IPM plan is approved, it shall be the Contractor's responsibility to carry out work according to the IPM Plan. Any subsequent changes in the IPM Plan must first receive the approval of the facility manager.

Service report and monitoring forms: A service report form must be filed at the end of each working day and placed in a Pest Log Book at the treatment site. The form shall summarize which coaches were treated that day; details on which pesticide products were applied, if any; name of the work site, employee name, and hours worked. The monitoring form shall summarize treatments made, evidence of pest presence, status of previously suggested structural or operational changes for which City staff are responsible, and other relevant information. The service report form and monitoring form may be combined. Service report forms and monitoring forms must be retained at the facility in a location designated by the MUNI IPM Coordinator.

Durability of pesticide treatments: Pesticide applications must not wash or blow out of coaches during scheduled weekly cleanings.

Employee Qualifications

The contractor shall provide only qualified pest management personnel with experience in the conduct of IPM programs. Throughout the life of this contract, all personnel providing on-site pest management services must be appropriately licensed or certified by the California Department of Pesticide Regulation (CDPR) or the California Structural Pest Control Board (CSPCB) in accordance with California State law. Employees of awardees must attend annual safety meetings offered by MUNI in regards to safety on the job and security on the work site. Certification of the proposer's employees or business by the EcoWise or IPM Star programs is encouraged but not required.

Price Structure

The Contractor will charge for pest management services based on its proposal for a “monthly pest management rate.” This rate shall include all time and materials required to adequately suppress pest populations. *Note that this is not simply a “lowest proposer” contract; the monthly pest management rate accounts for 20% of the evaluation of the proposal.*

Pesticide Application Restrictions

Exposure to pesticides by nontarget organisms should be minimized at all times. Use of non-pesticide prevention and treatment methods are the preferred approaches for pest suppression. *Under the IPM Ordinance, all chemical pesticides—with certain exceptions—are banned for use on City property EXCEPT those listed on the San Francisco Reduced Risk Pesticide List (SFRRPL).* This list is updated annually. It is the Contractor's responsibility to be familiar with current version of the SFRRPL, and to comply with its limitations. The current SFRRPL is available from the Department of the Environment or at:

http://www.sfenvironment.com/aboutus/innovative/ipm/pest_list06/index.htm

The Contractor shall fill out the required Exemption forms (described in the IPM Ordinance) when new or additional products are desired for use. These forms shall be submitted to the SFDE, whose approval is required before the requested products may be used. Pesticides needed to address an emergency situation for which non-pesticide methods are not feasible (Environment Code Section 307(e)) may be used without an approved exemption, but an exemption notification must be submitted within 72 hours of the application.

Posting and Notification Requirements

The Contractor must supply each facility with all pesticide application notification signage required under the IPM Ordinance. Signs shall contain the name and active ingredient of the pesticide product, the target pest, date of use, signal word indicating the pesticide's toxicity category, re-entry date/time for the treated area, and the name and contact phone number for the responsible facility manager. In the event of a spray application of a pesticide, the Contractor will be responsible for posting the treated area three (3) days prior and four (4) days following the application. Signage that may be required includes:

- Permanent indoor pesticide notification signs.
- Temporary indoor and outdoor notification signs.
- Pest Sighting Forms (see “Components of IPM Plan”, page 11).

Pesticide Use Reporting Requirements

The Contractor shall provide, at no additional cost to the City, quarterly electronic pesticide use reports to the SFDE IPM Manager. These reports shall list all chemical and non-chemical pest control measures taken at each site. It is the Contractor’s responsibility to insure electronic compatibility with the City’s existing Pesticide Use Reporting database.

At the Contractor’s discretion, reports may be submitted more frequently than quarterly. At minimum, these reports shall be submitted within one month of the end of each quarter, according to the following schedule:

<u>Reporting Period</u>	<u>Deadline for Report</u>
January 1 – March 31	May 1
April 1 – June 30	August 1
July 1 – September 30	November 1
October 1 – December 31	February 1

Meetings and Site Visit Requirements

The Contractor, or Contractor’s representative approved by SFDE, is required to attend monthly (2 hour) scheduled meetings of the IPM Technical Advisory Committee, as well as occasional ad hoc meetings or site visits approved by the SFDE IPM Program Manager. For all of the above meetings, the Contractor must provide free of charge up to four (4) hours of his/her time per calendar month. Meetings in excess of 4 hours per month may be charged to the convening department at the “training & consultation” hourly service rate.

Uniforms and Equipment

All personnel, while working in or on government-owned or leased premises, shall have at a minimum the Contractor’s company name easily identifiable, affixed thereon in a permanent or semi-permanent manner. Additional personal protective equipment, required by State Law for the safe performance of work, must be determined and provided by the Contractor. Vehicles used by the Contractor must be clearly marked and identified in accordance with State and local regulations.

Department of the Environment Contact

All required reports, pesticide exemption requests, and inquiries about the IPM Program shall be directed to:

Chris Geiger, Integrated Pest Management Program Manager
San Francisco Department of the Environment
11 Grove Street
San Francisco, CA 94102
Telephone: (415) 355-3759
FAX: (415) 554-6393
e-mail: chris.geiger@sfgov.org

VI. Submission Requirements

A. Time and Place for Submission of Proposals

To respond to the RFP, companies must follow the guidelines outlined below.

Proposals must be received by **2:00 p.m. on September 14, 2007**

Postmarks will not be considered in determining the timeliness of submission. Late submissions will not be considered. Proposals may be delivered or mailed to:

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

Proposers shall submit one (1) original proposal copy, separately bound and (2) copies of the proposal separately bound, plus two (2) copies separately bound, required HRC forms in a sealed envelope clearly marked, "**RFP 83518, Integrated Pest Management Service for City Owned Buildings and Properties**", to the above address.

RFP's that are submitted by FAX or e-mail will not be accepted. *All proposal materials that are submitted become the property of the City and County of San Francisco and will not be returned.*

B. Format and Content of Proposals

Proposers may submit proposals for *one* or *both* of two groups of treatment sites:

A).CITYWIDE INTEGRATED PEST MANAGEMENT SERVICES (see Scope of Work Section III Part A. and the attached PDF file List of Pest Management Service Sites).

B).PEST MANAGEMENT SERVICES FOR MUNI COACHES – (see Scope of Work Section III Part B. and the attached PDF file List of Pest Management Service Sites).

Contractor must note at the top of the first page which group of treatment sites is being proposed. Firms applying to both Citywide Integrated Pest Management Services Part "A." and Pest Management Services for Muni Coaches Part "B." must submit separate IPM plans (page 15, section 2c.) and Price Proposals (page 17, section 5.) for each section. Firms interested in responding to this RFP must submit the following information, in the order specified on page 16.

1. Introduction and Executive Summary (up to 1 page)

Submit a letter of introduction and executive summary of the proposal. The letter must be signed by a person authorized by your firm to obligate your firm to perform the commitments contained in the proposal. Submission of the letter will constitute a representation by your firm that your firm is willing and able to perform the commitments contained in the proposal.

2. Service Approach (up to 12 pages including Sample IPM Plan)

a. Examples of IPM Approach:

Describe three examples where the Firm has creatively applied the IPM approach to solve difficult pest problems. Examples must be from the contractor's past experience and must involve at least two staff members proposed for on-site services in San Francisco. Ideally, examples involve service contracts of similar size and scope to the San Francisco contract. Provide project summary, budget information if appropriate, names of staff involved, and contact information for references at the facility involved.

b. Record-Keeping and Reporting Capability:

The Firm shall describe how he/she intends to meet the record-keeping and reporting requirements, including a brief description of data collection systems used.

c. Site Visit And Sample IPM Plan Documents:

Prospective proposer must provide a set of Sample IPM Plan documents corresponding to each section of the contract for which they are bidding. Each set must be clearly labeled: "PART A. - CITYWIDE IPM" or "PART B. - MUNI COACHES." Before preparing the Sample IPM Plans, proposers must visit ONE OR BOTH of the following sites and assemble the documents noted below:

Mandatory Site Visits

(REQUIRED FOR PROPOSERS APPLYING FOR PART A. CITYWIDE IPM)

LOCATION: San Francisco General Hospital, Main Bldg "B" wing

August 29, 2007 at 2:00 p. m.

Required submissions:

-Sample IPM Plan for "B" wing, food preparation/storage area.

-Sample service report form.

-Sample monitoring form.

(REQUIRED FOR PROPOSERS APPLYING FOR PART B. MUNI COACHES)

LOCATION: Flynn Yard: 1940 Harrison Street, San Francisco, CA 94103

August 31, 2007 at 10:00 p.m.

Required submissions:

-Sample IPM Plan, with emphasis on logistics and communications.

-Sample service report form.

-Sample monitoring form.

To the greatest extent possible, sample IPM plans shall include "Components of IPM Plans" listed in Section V. Part A.

d. Emergency and Special Services Capability:

(REQUIRED FOR PART A. – CITYWIDE IPM PROPSERS ONLY).

The Firm shall describe his/her plan for meeting the emergency and special service requests described in the scope of work (for example, availability of trucks and personnel).

e. Public Health Vector Control Capability:

(REQUIRED FOR PART A. – CITYWIDE IPM PROPSERS ONLY).

The Firm shall describe all relevant experience with control of mosquitoes and other disease vectoring organisms of public health interest.

3. Firm Qualifications (up to 3 pages)

Provide information on your firm's background and qualifications which addresses the following:

- a. Name, address, and telephone number of a primary contact person.
- b. A brief description of your firm, certifications held, as well as how any joint venture association would be structured.
- c. Address(es) and location(s) of local offices and service headquarters that would be involved in servicing the City and County of San Francisco contract.
- d. Description of microscopes, pest detection equipment or other equipment possessed by the firm that would be used for performance of the contract.
- e. Names of all staff, supervisors, and subcontractors who would work on the CCSF contract
- f. The role each staff member and subcontractor would play in the project (onsite service technician, onsite supervisor, manager, owner, etc.).
- g. Experience, education and qualifications of each staff member, including licenses and certifications held (including EcoWise certification), verification that license(s) are valid, and other relevant training or skills.
- h. Written assurance that the staff members listed above will be performing the work and will not be substituted with other personnel or reassigned to another project without the City's prior approval. Assurance must also be made that any substitute personnel be fully qualified.
- i. Certification by the California Structural Pest Control Board that the proposer's structural pest control business license is current and valid.
- j. Listing of any violations of state pesticide regulations or pest management regulations within the past three years.
- k. Description of in-house training program for firm employees.
- l. Description of in-house health & safety program.
- m. Description of the firm's use of alternate fuel vehicles, including the number of hybrid-electric, electric, compressed natural gas, biodiesel, or human-powered vehicles likely to be used for servicing this contract.

4. References (1 page)

The Contractor **must submit** a list of at least four (4) verifiable references (including names, titles, affiliations and telephone numbers) for work comparable to that discussed in these specifications that has been completed during the last three (3) years or is currently in progress. If the contractor has previously worked for CCSF, at least one of these references must be from a contracting City and County of San Francisco department.

5. Price Proposal (1 page per section)

The City intends to award this contract to the firm that it considers will provide the best overall program services. The City reserves the right to accept other than the lowest priced offer and to reject any proposals that are not responsive to this request.

Please provide a price proposal in a sealed envelope that includes hourly rates for the services (described in section V., Scope of Work, part “A” – Citywide Integrated Pest Management and/or section V., Scope of Work, part “B”- Pest Management Service for Muni Coaches). These rates will either be used to charge for services on a time and materials basis, or as base rates for negotiating flat monthly fees with individual facility managers.

(REQUIRED FOR PART A. – CITYWIDE IPM PROPOSERS ONLY)

- a. Emergency Services dollars per hour.
- b. Short-term Services dollars per hour.
- c. Ongoing Services dollars per hour.
- d. Training and Consultation Services dollars per hour.

(REQUIRED FOR PART B. – MUNI COACH PEST MANAGEMENT PROPOSERS ONLY)

- a. Monthly Pest Management Services dollars per month.

NOTE: A separate price proposal must be provided for each section of this RFP being proposed. Each envelope must be clearly labeled as appropriate: “PART A. - CITYWIDE INTEGRATED PEST MANAGEMENT or “PART B. - PEST MANAGEMENT SERVICES FOR MUNI COACHES. If a proposer is applying for both sections, two price proposals must be submitted.

VII. Evaluation and Selection Criteria

A. Minimum Requirements

Any proposal that does not demonstrate that the proposer meets these minimum requirements by the deadline for submittal of proposals will be considered non-responsive and will not be eligible for award of the contract.

(MINIMUM REQUIREMENTS-ALL PROPOSERS)

- 1. Firm must be a registered structural pest control company in the State of California.
- 2. At least one supervisor of onsite operations must possess a valid Structural Pest Control Operators license for Branch 2 (General Structural Pests).
- 3. All onsite staff must possess, at least, valid Structural Pest Control Applicator certification and/or Qualified Applicator Certificates.
- 4. Firm must demonstrate five (5) years minimum experience with industrial, commercial, and institutional accounts immediately preceding a submission of RFP.
- 5. Four (4) verifiable references must be provided.

(MINIMUM REQUIREMENTS FOR PART A – CITYWIDE IPM PROPOSERS ONLY):

- 6. All onsite supervisors must possess, at least, valid Structural Pest Control Field Representative Licenses for Branch 2.
- 7. Firm must include at least one onsite staff member with valid Category K certifications for public health pest control.

8. Firm must include at least one onsite staff member with valid license for animal trapping (for animals other than rodents) with the Department of Fish and Game

B. Selection Criteria (600 points possible)

Proposals passing the minimum requirements above will be evaluated by a selection committee that includes parties with expertise in IPM. *Proposers with no more than three of the highest scoring proposals will be invited to an oral interview with the selection committee.* Proposer with the highest final score – including the oral interview – will be selected. Proposers are encouraged to seek EcoWise certification (see *EcoWise Certified Standards for IPM Certification in Structural Pest Management* is available at www.ecowisecertified.org).

C. Selection Committee

A Selection Committee consisting up to six (6) persons for Section A. Citywide Integrated Pest Management and Section B. Pest Management Services for Muni Coaches. The City intends to evaluate the proposals generally in accordance with the evaluation criteria described in Section VI. Evaluation and Selection Criteria. Up to three (3) of the firms with the highest scoring proposals may be interviewed by the selection Committee to make the final selection. Evaluation of the proposal shall be within the sole judgment of the discretion of the Selection Committee.

D. Evaluation Criteria

The Selection Committee will evaluate each proposal meeting the requirements set forth in the RFP, Evaluation criteria and weighted scoring will be used to evaluate proposals, in accordance with City regulations, rating discounts points may be given to proposers that have been certified by the San Francisco Human Rights Commission as LBE's Criteria and Point Allocation are as shown below.

In Accordance with Administrative Code Chapter 21C, for proposal evaluation purposes, Purchasing will reduce your proposal based on any sales tax or business tax revenue the City would receive from the purchase.

1. **Submission Requirements (10 points)**
 - a. Organization of the document (3 points).
 - b. Complete and accurate information. (4 points).
 - c. Follow RFP instructions (3 points).
2. **Contractor's Licenses and Certifications (40 points)**
 - a. Breadth and level of licenses and certifications held by Contractor's assigned project staff and subcontractors, above and beyond the minimum requirements. (10 points).
 - b. Firms that offer EcoWise-certified IPM services by September 14, 2007 will automatically receive 30 points (30 points).
3. **Experience of Contractor and Contractor's Assigned Project Staff (50 points)**
 - a. Quality of performance on recent contracts – Including number of violations (30 points).
 - b. Extent of experience with vector control projects (10 points).
 - c. Quality and extent of in-house IPM training program (5 points).
 - d. Quality and extent of in-house health & safety program (5 points).

- 4. Service Approach (160 points)**
- a. Creativity and thoroughness in seeking less-toxic pest management approaches (from “Examples of IPM Approach”). Firms that include at least one on-site staff member who is a certified EcoWise Practitioner by September 14, 2007 will automatically receive (40 points).
 - b. Emergency and special services capability (5 points).
 - c. Completeness of data reporting capabilities, and abilities to integrate with City’s pesticide use reporting system (5 points).
 - d. Proximity of Contractor’s business to service areas (5 points).
 - e. Adequacy of Contractor’s facilities, including the availability of microscopes and other pest identification tools (5 points).
 - f. Contractor’s likelihood of using alternate-fuel vehicles during the delivery of services to the City (5 points).
 - g. Site-Specific Sample IPM Plan (95 points)
 - 1) Ability of Contractor to recognize pest problems and sources of problems (20 points).
 - 2) Thoroughness of recommendations for pest prevention (25 points).
 - 3) Quality of recommendations for most affordable and feasible chemical or non-chemical controls (30 points).
 - 4) Justification for all actions proposed (10 points).
 - 5) Quality and completeness of monitoring forms (5 points).
 - 6) Quality and completeness of service report form (5 points).
- 5. References (60 points)**
- a. Quality of recently completed projects, including effectiveness, adherence to IPM principles, adherence to schedules and budgets, and past experience by City and County of San Francisco departments with the Contractor’s services (60 points).
- 6. Oral Interview (80 points) *Interviews conducted for up to three highest scoring proposals***
- a. Contractor’s working knowledge of the biology and behavior of problem pests (10 points).
 - b. Contractor’s working knowledge of the use of least toxic approaches to pest management (10 points).
 - c. Extent of Contractor’s experience using non-chemical and reduced-risk chemical pest control methods (10 points).
 - d. Contractor’s working knowledge of pesticide hazards, including toxicity, human exposure potential, and potential environment effects of pesticides (10 points).
 - e. Knowledge of the specialized pest management concerns typically faced by local government agencies (20 points).
 - f. Quality of proposed communication approach between pest management personnel and CCSF staff (20 points).
- 7. Price Proposal (200 points)**
- a. **(PART A – CITYWIDE IPM PROPOSERS ONLY)**
Points will be awarded *for each service type* proportionally based on the formula below. Points for each service type will then be added together for a possible 200 points total.

Formula for calculating Point Score (Citywide IPM proposers):

Points for proposer “A” for each service type=

Possible points for service X (lowest qualified price proposal for service ÷ proposer "A's" price proposal for service)

Total points for proposer “A” =
 Emergency services points + Short-term services points + Ongoing services points +
 Training & Consultation service points.

The possible points for the various services are as follows:

<u>Service type</u>	<u>Possible points</u>
Emergency Services	8
Short-term Services	40
Ongoing Services	150
Training & Consultations Services	2

Example:

Firm A’s price proposal for Emergency Services: \$100/hour Lowest qualified price proposal for Emergency Services : \$50/hour 8 (possible points) X (\$50/\$100) =	4 points
Firm A’s price proposal for Short-Term Services: \$100/hour Lowest qualified price proposal for Short-Term Services : \$50/hour 40 (possible points) X (\$50/\$100) =	20 points
Firm A’s price proposal for Ongoing Services: \$50/hour Lowest qualified price proposal for Ongoing Services : \$50/hour 150 (possible points) X (\$50/\$50) =	150 points
Firm A’s price proposal for Training & Consultations Services: \$80/hour Lowest qualified price proposal for Training & Consultations: \$40/hour 2 (possible points) X (\$40/\$80) =	1 point
TOTAL POINTS for Proposer “A” =.....	175 points

- b. **(PART B – MUNI COACH PROPOSERS ONLY)** Point scores will be calculated proportionally using the *monthly service rate for a possible 200 points total*.

Formula for calculating Point Score (MUNI Coach proposers):

Points for proposer “A” =
 (average \$/hr for lowest qualified price proposal received)/ (average \$/hr in Firm “A”’s price proposal) X 200

Example:

Firm A proposes a monthly rate of \$500/month
 Firm B proposes the lowest monthly rate of \$400/month
 Point score = (B ÷ A) X 200
 Points earned by Firm A = (\$400)/(\$500) X 200 = 160 points
 Points earned by Firm B (lowest proposer) = (\$400)/(\$500) X 200 = 160 points

VIII. Schedule of Events

A. Pre-Proposal Conference

Proposers must attend a mandatory pre-proposal conference on:

DATE: August 24, 2007

TIME: 12:30 p.m.

to be held at:

**City and County of San Francisco
Office of Contract Administration-Purchasing
City Hall, Room 431A
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685**

NOTE: Please bring a copy of this proposal to the Pre-proposal Conference.

All questions will be addressed at this conference and any available new information will be provided at that time. If you have further questions regarding the RFP, it must be directed to:

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

The City will keep a record of all parties who request and receive copies of the RFP. Any requests for information concerning the RFP whether submitted before or after the pre-proposal conference, must be in writing, and any substantive replies will be issued as written addenda to all parties who have requested and received a copy of the RFP from the **Office of Contract Administration-Purchasing**. Questions raised at the pre-proposal conference may be answered orally. If any substantive new information is provided in response to questions raised at the pre-proposal conference, it will also be memorialized in a written addendum to this RFP and will be distributed to all parties that received a copy of the RFP.

No questions or requests for interpretation will be accepted after **September 5, 2007**.

B. Schedule

The anticipated schedule for selecting a proposer is shown below:

Proposal Phase	Date	Time	Location
RFP is advertised and issued	August 16, 2007		
Last Date for filing objections to RFP terms	August 22, 2007	5:00 PM	
Pre-proposal conference	August 24, 2007	12:30 PM	City Hall, Room 431-A 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102
Citywide Site visits to create sample IPM Plans	August 29, 2007	2:00 PM	San Francisco General Hospital Main Bld., "B" Wing 1001 Potrero Avenue, San Francisco, CA 94110
Deadline for submission of written questions or request for clarification	September 5, 2007	5:00 PM	
Proposal due date	September 14, 2007	2:00 PM	
Oral Interviews	September 28, 2007	10:00 AM	City Hall, Room 421 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102
Muni Coach Site Visit to create sample IPM Plans	August 31, 2007	10:00 PM	Flynn Yard 1940 Harrison Street, San Francisco, CA 94103

The City reserves the right to modify this schedule, if it is in the best interest of the City to do so.

C. Contract Award

The **Office of Contract Administration-Purchasing** will select a proposer with whom **Office of Contract Administration - Purchasing** staff shall commence contract negotiations. The selection of any proposal shall not imply acceptance by the City of all terms of the proposal, which may be subject to further negotiation and approvals before the City may be legally bound thereby. If a satisfactory contract cannot be negotiated in a reasonable time the **Office of Contract Administration-Purchasing**, in its sole discretion, may terminate negotiations with the highest ranked proposer and begin contract negotiations with the next highest ranked proposer.

IX. Terms and Conditions for Receipt of Proposals

A. Errors and Omissions in RFP

Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify the Department, in writing, if the proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to the Department promptly after discovery, but in no event later than five working days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

B. Inquiries Regarding RFP

Inquiries regarding the RFP and all oral notifications of an intent to request written modification or clarification of the RFP, must be directed to:

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

**Telephone: (415) 554-6735
FAX: (415) 554-6717
e-mail: renee.muckeroy@sfgov.org**

C. Objections to RFP Terms

Should a proposer object on any ground to any provision or legal requirement set forth in this RFP, the proposer must, not more than ten calendar days after the RFP is issued, provide written notice to the Department setting forth with specificity the grounds for the objection. The failure of a proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

D. Addenda to RFP

The Department may modify the RFP, prior to the proposal due date, by issuing written addenda. Addenda will be sent via regular, first class U.S. mail to the last known business address of each firm listed with the Department as having received a copy of the RFP for proposal purposes. The Department will make reasonable efforts to notify proposers in a timely manner of modifications to the RFP. Notwithstanding this provision, the proposer shall be responsible for ensuring that its proposal reflects any and all addenda issued by the Department prior to the proposal due date regardless of when the proposal is submitted. Therefore, the City recommends that the proposer call the Department before submitting its proposal to determine if the proposer has received all addenda.

E. Term of Proposal

Submission of a proposal signifies that the proposed services and prices are valid for 120 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

F. Revision of Proposal

A proposer may revise a proposal on the proposer's own initiative at any time before the deadline for submission of proposals. The proposer must submit therevised proposal in the same manner as the original. A revised proposal must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any proposer.

At any time during the proposal evaluation process, the Department may require a proposer to provide oral or written clarification of its proposal. The Department reserves the right to make an award without further clarifications of proposals received.

G. Errors and Omissions in Proposal

Failure by the Department to object to an error, omission, or deviation in the proposal will in no way modify the RFP or excuse the vendor from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

H. Financial Responsibility

The City accepts no financial responsibility for any costs incurred by a firm in responding to this RFP. Submissions of the RFP will become the property of the City and may be used by the City in any way deemed appropriate.

I. Proposer's Obligations under the Campaign Reform Ordinance

Proposers must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

If a proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the proposer is prohibited from making contributions to:

- the officer's re-election campaign

- a candidate for that officer's office
- a committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (i) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (ii) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

- a) **Criminal.** Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
- b) **Civil.** Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
- c) **Administrative.** Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

J. Sunshine Ordinance

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

K. Public Access to Meetings and Records

If a proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the proposer must comply with Chapter 12L. The proposer must include in its proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to proposer's meetings and records, and (2) a summary of all complaints concerning the proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in proposer's Chapter 12L submissions shall be

grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

L. Reservations of Rights by the City

The issuance of this RFP does not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right at any time to:

1. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all proposals;
3. Reissue a Request for Proposals;
4. Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;
5. Procure any materials, equipment or services specified in this RFP by any other means; or
6. Determine that no project will be pursued.

M. No Waiver

No waiver by the City of any provision of this RFP shall be implied from any failure by the City to recognize or take action on account of any failure by a proposer to observe any provision of this RFP.

N. Local Business Enterprise Goals and Outreach

The requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”) shall apply to this RFP.

1. Chapter 14B. Requirements

LBE Subconsultant Participation Goals (Does not Apply - Subcontracting Goals Waived for this Contract).

2. LBE Participation

The City strongly encourages proposals from qualified LBEs. Pursuant to Chapter 14B, the following rating discount will be in effect for the award of this project for any proposers who are certified by HRC as a LBE, or joint ventures where the joint venture partners are in the same discipline and have the specific levels of participation as identified below. Certification applications may be obtained by calling HRC at (415) 252-2500. The rating discount applies at each phase of the selection process. The application of the rating discount is as follows:

- a. A 10% discount to an LBE; or a joint venture between or among LBEs; or
- b. A 5% discount to a joint venture with LBE participation that equals or exceeds 35%, but is under 40%; or
- c. A 7.5% discount to a joint venture with LBE participation that equals or exceeds 40%; or
- d. A 10% discount to a certified non-profit entity.

If applying for a rating discount as a joint venture: The LBE must be an active partner in the joint venture and perform work, manage the job and take financial risks in proportion to the required level of participation stated in the proposal, and must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the LBE joint venture's work shall be set forth in detail separately from the work to be performed by the non-LBE joint venture partner. The LBE joint venture's portion of the contract must be assigned a commercially useful function.

3. HRC Forms to be Submitted with Proposal

- a. All proposals submitted must include **Human Rights Commission (HRC) Form 3: HRC Non-Discrimination Affidavit**: Must be signed by Contractor under penalty of perjury (see Appendix A).
- b. **HRC Form 5: Employment Form**: List the key personnel and responsibilities of the Contractors and Subcontractors (see Appendix A).
- c. **HRC Form 12B-101**: Submit only if the Prime Contractor is not already in compliance with Equal Benefits Requirements. This form is available on the HRC website at www.sfhrc.org.

<http://sfhrc.org/site/uploadedfiles/sfhumanrights/db/HRC%20Attach%203%20GS%20090106.doc>

- d. Please submit only two copies of the above forms with your proposal. The forms should be placed in a separate, sealed envelope labeled HRC Forms.

If you have any questions concerning the HRC Forms, you may call **Selormey Dzikunu, the Human Rights Commission Contract Compliance Officer at 415-274-0511**. The forms will be reviewed and approved by HRC.

X. Contract Requirements

A. Standard Contract Provisions

The successful proposer will be required to enter into a contract substantially in the form of the Agreement for Professional Services, attached hereto as Appendix C. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsements, surety bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another firm and may proceed against the original selectee for damages.

Proposers are urged to pay special attention to the requirements of the Minimum Compensation Ordinance (§43 in the Agreement), the Health Care Accountability Ordinance (§44 in the Agreement), and the First Source Hiring Program (§45 in the Agreement), (§15 in the Agreement), as set forth in paragraphs B, C and D below.

B. Minimum Compensation Ordinance (MCO)

The successful proposer will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements. For the contractual requirements of the MCO, see §43 in the Agreement.

Note that the gross hourly compensation for covered employees for For-Profit entities is \$10.77 beginning January 1, 2005.

The MCO rate for non-profit corporations and government entities shall remain at \$9.00.

Additional information regarding the MCO is available on the web at <http://www.sfgov.org/olse>

C. Health Care Accountability Ordinance (HCAO)

The successful proposer will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at <http://www.sfgov.org/olse>.

D. First Source Hiring Program (FSHP)

If the contract is for more than \$50,000, the successful proposer will be required to agree to comply fully with and be bound by the provisions of the First Source Hiring Program ordinance, as set forth in S.F. Administrative Code Chapter 83. Generally, this ordinance requires contractors to notify the First Source Hiring Program of available entry level jobs and provide the Workforce Development System with the first opportunity to refer qualified individuals for employment.

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at www.sfgov.org/moed/fshp.htm.

E. Proposal Security

Each proposal must be accompanied by a proposal bond, or money order, or a cashier's check or certified check, in the amount of **\$1,000.00** payable to the City and County of San Francisco, to guarantee the filing of Insurance Certificates, and proper execution of the contract. Personal or company checks will not be accepted. Any proposal submitted without the proper proposal security shall be determined to be non-responsive and result in the rejection of the proposal.

XI Additional Conditions and Requirements

A. Terms of Payment

Proposer (s) may offer any discount for payment of purchases made within thirty (30) days of receipt of invoices. However, for the purpose of this bid proposal, the maximum discount that will be applied for bid evaluation purposes will be two-percent (2%). Any discount offered above the two-percent (2%) limit will be taken as a trade discount, and will be deducted from the invoice amount without regard to payment date.

B. Special Contractor Responsibilities

- a. Any work completed by the contractor that does not meet quality standards as determined by the city department shall be re-done by the contractor at no cost to the City. In the event contractor's work repeatedly does not meet quality standards, the Purchaser reserves the right to terminate contract without any cost to the City.
- b. Contractor agrees that the services to be performed by it herein, including locations and areas for specified services, the hours for which such services are to maintained.
- c. The Contractor must, at all times, maintain adequate staffing to faithfully execute the contract. If it appears at anytime the specifications of the contract are not being completed, the contractor will supply additional staff to successfully meet the terms of the contract. The City may request contractor to remove any staff at any time it desires and for any reason whatsoever, and the contractor shall provide an immediate replacement at no additional cost to the City.

C. Price

The price proposal are to be firm for the initial period of twenty-four (24) months from award date through the end of the last month of this initial twenty-four (24) month consecutive period of the contract.

D. Price Adjustment

Prices may be increased or decreased commencing on or after the end of the last month of the initial consecutive twenty-four (24) month period of the contract. Such adjustments shall be a percentage increase or decreased of the prices for the previous twelve (12) month period. Said percentage shall be equal to the percentage increase or decrease for Private Industry Workers in Security Guard Service occupations for the previous twelve (12) months as published by the U.S. Department of Labor, Bureau of Labor Statistics in the Employment Cost Index. Such adjustments shall commence 30 days after notification and submission of satisfactory documentation and agreement of the Purchaser. It shall be Contractor's responsibility to request and to provide documentation satisfactory to the Purchaser to support any increases. This price adjustment clause shall apply to any extensions of the contract term: however, any price increase shall be limited to a maximum 5% for each (12) month period unless approved by the Purchaser.

E. Multiple Awards

Multiple awards may be made for any/all items to multiple contractors to ensure adequate levels of uninterrupted service. Contractors will be notified by written contract acceptances. Purchaser reserves the right to request service not readily available from any source other than an awarded vendor if said Purchaser deems it is in the public interest to take such action.

F. Additional Services

- a. If in the satisfaction of interests, it is necessary to purchase additional services from Contractor, additional services may be added to this contract by mutual agreement of the parties.
- b. Aggregated cost of all services added to the contract during the contract term shall not exceed 20% of the total estimated value (cost) of the original contract.
- c. All request to add additional services to the contract must be submitted by City departments in writing to the Office of Contract Administration – Purchasing (Purchasing). All requests must include complete scope of work, estimated quantities for the remainder of the contract period and a price quotation provided by Contractor, for each service.
- d. All additional services added to the contract shall be approved through issuance of a contract amendment, executed and signed by Purchasing, City Attorney and Contractor.
- e. In the event the aggregate cost of the contract increases by more than 20% of the total estimated value of the original contract, or the increase totals more than \$50,000, the amount over 20%, or \$50,000, shall be proposed in accordance with Standard Purchasing Procedures.

The resulting contract award shall be added to the contract through a contract modification (same Contractor) or the issuance of a new contract (new Contractor) and include Contractor's name and information, complete item description, delivery information and pricing information.

- f. The contract term for the additional services added to the contract after the initial award shall be the remaining term of the existing contract and any extension thereof.

XII. Protest Procedures

A. Protest of Non-Responsiveness Determination

Within five (5) working days of the City's issuance of a notice of non-responsiveness, any firm that has submitted a proposal and believes that the City has incorrectly determined that its proposal is non-responsive may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth (5th) working day following the City's issuance of the notice of non-responsiveness. The notice of protest must include a written statement specifying in detail each and every one of the

grounds asserted for the protest. The protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

B. Protest of Contract Award

Within five (5) working days of the City's issuance of a notice of intent to award the contract, any firm that has submitted a responsive proposal and believes that the City has incorrectly selected another proposer for award may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth (5th) working day after the City's issuance of the notice of intent to award.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

C. Delivery of Protests

All protests must be received by the due date. If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the City received the protest. Protests or notice of protests made orally (e.g., by telephone) will not be considered. Protests must be delivered to:

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

Appendix A

These forms are to be submitted with your Qualifications Proposal.

Put them in a separate envelope addressed to:

Selormey Dzikunu
Contract Compliance Officer
Human Rights Commission

Questions on the forms? Tel: 415-274-0511

HRC Form 3: Non-Discrimination Affidavit (Required)

HRC Form 5: HRC Employee Form (Required)

Appendix B Standard Forms

The requirements described in this Appendix are separate from those described in Appendix A.

Before the City can award any contract to a contractor, that contractor must file four standard City forms (items 1-3 on the chart). Because many contractors have already completed these forms, and because some informational forms are rarely revised, the City has not included them in the RFP package. Instead, this Appendix describes the forms, where to find them on the Internet (see bottom of page 2), and where to file them. If a contractor cannot get the documents off the Internet, the contractor should call (415) 554-6248 or e-mail Purchasing (purchasing@sfgov.org) and Purchasing will fax, mail or e-mail them to the contractor.

If a contractor has already filled out items 1-3 (See note under item 3.) on the chart, **the contractor should not do so again unless the contractor's answers have changed.** To find out whether these forms have been submitted, the contractor should call Vendor File Support at (415) 554-6702.

If a contractor would like to apply to be certified as a local business enterprise, it must submit item 5. To find out about item 5 and certification, the contractor should call Human Rights Commission at (415) 252-2500.

Item's 6 and 7 is only for information purposes.

Item	Form Name and Internet Location	Form Number	Description	Return the Form to; For more information
1.	Request for Taxpayer Identification Number and Certification http://www.sfgov.org/oca/purchasing/forms.htm http://www.irs.gov/pub/irs-fill/fw9.pdf	W-9	The City's City needs the contractor's taxpayer ID number on this form. If a contractor has already done business with the City, this form is not necessary because the City already has the number.	Office of Contract Admin. Purchasing Division City Hall, Room 430 San Francisco, CA 94102-4685 (415) 554-6743
2.	Business Tax Declaration http://www.sfgov.org/oca/purchasing/forms.htm	P-25	All contractors must sign this form to determine if they must register with the Tax Collector, even if not located in San Francisco. All businesses that qualify as "conducting business in San Francisco" must register with the Tax Collector.	Office of Contract Admin. Purchasing Division City Hall, Room 430 San Francisco, CA 94102-4685 (415) 554-6718

Item	Form Name and Internet Location	Form Number	Description	Return the Form to; For more information
3.	<p>S.F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits</p> <p>http://www.sfgov.org/oca/purchasing/forms.htm - In Vendor Profile Application</p>	HRC-12B-101	<p>Contractors tell the City if their personnel policies meet the City's requirements for nondiscrimination against protected classes of people, and in the provision of benefits between employees with spouses and employees with domestic partners. Form submission is not complete if it does not include the additional documentation asked for on the form. Other forms may be required, depending on the contractor's answers on this form. (Note: Contract-to-Contract Compliance status vendor must fill out this form each time contracting with the City.)</p>	<p>Human Rights Comm. 25 Van Ness, Suite 800 San Francisco, CA 94102-6059 (415) 252-2500</p>
4.	<p>HRC LBE Certification Application</p> <p>http://www.sfgov.org/oca/purchasing/forms.htm - In Vendor Profile Application</p>		<p>Local businesses complete this form to be certified by HRC as LBEs. Certified LBEs receive a bid discount pursuant to Chapter 14B when bidding on City contracts. To receive the bid discount, you must be certified by HRC by the proposal due date.</p>	<p>Human Rights Comm. 25 Van Ness, Suite 800 San Francisco, CA 94102-6059 (415) 252-2500</p>
5.	<p>Insurance Requirements</p> <p>http://www.sfgov.org/oca/purchasing/add-forms.htm</p>	P-607	<p>Contain general information about insurance requirements applicable to some City proposals. It shows the types of insurance and coverage amounts the City may require of the successful proposer, but check the RFP for specific requirements.</p>	<p>It may be required from the successful proposer—see requirements in the RFP.</p>
6.	<p>Payment (Labor and Material) Bond</p> <p>http://www.sfgov.org/oca/purchasing/add-forms.htm</p>		<p>If the RFP requires a Payment (Labor and Material) Bond from the awarded contractor, discuss this form with your insurance carrier.</p>	<p>It may be required from the successful proposer—see requirements in the RFP.</p>

Item	Form Name and Internet Location	Form Number	Description	Return the Form to; For more information
7.	Performance Bond http://www.sfgov.org/oca/purchasing/add-forms.htm		If the RFP requires a Performance Bond from the awarded contractor, discuss this form with your insurance carrier.	It may be required from the successful proposer—see requirements in the RFP.

Where the forms are on the Internet

Office of Contract Administration

Homepage: <http://www.sfgov.org/oca/>

Purchasing forms: <http://www.sfgov.org/oca/purchasing/forms.htm>

Human Rights Commission

Search for HRC forms under HRC Homepage: www.sfhrc.org

APPENDIX C – Agreement Between City and County of San Francisco and Contractor

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

[insert name of contractor]

This Agreement is made this **[insert day]** day of **[insert month]**, 20 **[insert year]**, in the City and County of San Francisco, State of California, by and between: **[insert name and address of contractor]**, hereinafter referred to as “Contractor,” and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing.”

Recitals

WHEREAS, the **[insert name of department]** (“Department”) wishes to **[insert short description of services required]**; and,

WHEREAS, a Request for Proposal (“RFP”) was issued on [insert date], and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

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

WHEREAS, approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number **[insert Personal Services Contract Number]** on **[insert date of Civil Service Commission action]**;

Now, THEREFORE, the parties agree as follows:

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.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from **[insert beginning date]** to **[insert termination date]**.

3. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation shall be made in monthly payments on or before the **[insert day]** day of each month for work, as set forth in Section 4 of this Agreement, that the [insert title of department head], in his or her sole discretion, concludes has been performed as of the **[insert day]** day of the immediately preceding month. In no event shall the amount of this Agreement exceed **[insert whole dollar amount in numbers and words -- no pennies]**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by **[insert name of department]** as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

6. Guaranteed Maximum Costs

a. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for,

Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City.

Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Left blank by agreement of the parties.

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands 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:

(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;

(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.

(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.

(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.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship 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.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City’s reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City’s request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. 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.

b. Payment of 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, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

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

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

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

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

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

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

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

c. All policies shall provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

[insert name and address of the department]

d. 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.

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

f. 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.

g. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

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

i. Any of the terms of conditions of this Section 15 may be waived by the City's Risk Manager in writing, signed by the Risk Manager, and attached to this Agreement as Appendix D. Such waiver is fully incorporated herein. The waiver shall waive only the requirements that are expressly identified and waived, and under such terms and conditions as stated in the waiver.

16. Indemnification

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this 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 in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

a. General Indemnity

To the fullest extent permitted by law, Contractor shall assume the defense of, indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of

the Contractor or its subconsultants) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees and costs of investigation), that arise directly nor indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Contractor and subconsultant to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.

b. Limitations

(1) No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.

(2) The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

(3) The Contractor's indemnification obligations of claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent of the Contractor's negligence or other breach of duty.

c. Copyright Infringement

Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in then performance of Contractor's services under this Agreement.

17. Incidental and Consequential Damages

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

18. Liability of City

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 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.

19. Liquidated Damages

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of **[insert whole dollar amount in words and numbers -- no pennies]** per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by Purchasing.

20. Default; Remedies

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

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, or 58.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(3) Contractor (a) is generally not paying its debts as they become due, (b) 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, (c) makes an assignment for the benefit of its creditors, (d) 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 (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) 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, (b) 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 (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. 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, 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 all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. 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.

21. Termination for Convenience

a. 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.

b. Upon receipt of the notice, 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:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) 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.

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

(6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

(7) 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.

c. 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:

(1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work 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 or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) 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.

(4) 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.

d. 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 the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on 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 such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

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

22. Rights and Duties upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government

Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of 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 data.

25. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City: **[insert name or title of department contact person, name of department, mailing address, e-mail address and fax number]**

To Contractor: **[insert name of contractor, mailing address, e-mail address and fax number]**

Any notice of default must be sent by registered mail.

26. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, 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 are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute

any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

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

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. 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 the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. 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.

32. Earned Income Credit (EIC) Forms

Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after

Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

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

b. Compliance and Enforcement

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and

shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

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

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

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

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters.

Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy

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

38. Resource Conservation

Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act

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

40. Sunshine Ordinance

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

41. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions

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

43. Requiring Minimum Compensation for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse. Capitalized terms used in this

Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of \$10.77 an hour for the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of this Agreement.

If a Covered Employee of a Nonprofit Corporation works in San Francisco, then that employee is covered by San Francisco's Minimum Wage Ordinance, which is Chapter 12R of the Administrative Code. As of January 1, 2007, Chapter 12R's minimum wage is \$9.14 per hour.

b. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

c. Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

d. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;

(3) The right to terminate this Agreement in whole or in part;

(4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(5) The right to bar Contractor from entering into future contracts with the City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City

pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

e. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

f. Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

h. The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

i. The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

j. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be

awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

1. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission..

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance

with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

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

b. First Source Hiring Agreement

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also

enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

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

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

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

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

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

- (6) Set the term of the requirements.
- (7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.
- (8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.
- (9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions

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

d. Exceptions

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

e. Liquidated Damages

Contractor agrees:

- (1) To be liable to the City for liquidated damages as provided in this section;
- (2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- (3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- (4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

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

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

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

(7) That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

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

46. Prohibition on Political Activity with City Funds

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

47. Preservative-treated Wood Containing Arsenic

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC 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% (HRC Contract Modification Form).

49. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. 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.

51. Construction

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

52. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

53. Compliance with Laws

Contractor shall keep itself fully informed of the City’s Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this 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.

54. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

55. Supervision of Minors

Contractor, and any subcontractors, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Contractor, or any subcontractor, in which he or she would have supervisory or disciplinary power over a minor under his or her care.

If Contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3).

If Contractor, or any of its subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Contractor shall comply, and cause its subcontractors to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Contractor shall provide, or cause its subcontractors to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian.

Contractor shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this section of the Agreement as a condition of its contract with the subcontractor.

Contractor acknowledges and agrees that failure by Contractor or any of its subcontractors to comply with any provision of this section of the Agreement shall constitute an Event of Default. Contractor further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Agreement, partially or in its entirety, to recover from Contractor any amounts paid under this Agreement, and to withhold any future payments to Contractor. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

56. 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.

57. Protection of Private Information

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

58. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

60. Slavery Era Disclosure

a. Contractor acknowledges that this contract shall not be binding upon the City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this Contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or \$1,000, whichever is greatest as determined by the Director. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

c. Contractor shall maintain records necessary for monitoring their compliance with this provision.

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

<p>CITY</p> <p>Recommended by:</p> <p>_____</p> <p>[name] [title] [department]</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Deputy City Attorney</p> <p>Approved:</p> <p>_____</p> <p>Naomi Kelly Director of the Office of Contract Administration, and Purchaser</p>	<p>CONTRACTOR</p> <p>[company name]</p> <p>By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <p>_____</p> <p>[name of authorized representative] [title] [company name] [address] [city, state, ZIP]</p> <p>City vendor number: [vendor number]</p>
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