

**City and County of San Francisco**

**Office of the City Attorney**

**Request for Proposals**

**-for-**

**Court Reporter Services**

**Deposition and Court Room Trials and Hearings**

**DATE: NOVEMBER 12, 2015**

**Deadline For Submission: 5:00 p.m., December 15, 2015**

**City and County of San Francisco, Office of the City Attorney**

**Request for Proposals for  
Court Reporter Services**

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**Appendices:**

- A. Standard Forms: Listing and Internet addresses of Forms related to Chapters 12B and 12C of the S.F. Administrative Code, business tax, employer identification number, insurance, and bonds.
- B. Agreement for Professional Services, P-500 (sample)

## Request for Proposals

### Court Reporter Services

#### 1A. INTRODUCTION

The Office of the City Attorney, City and County of San Francisco ("City Attorney's Office"), is issuing this Request for Proposals ("RFP") in search of firms to provide court reporting services for depositions and grievance arbitrations and/or court room trials and hearings. The City Attorney's Office will accept proposals for either scope of services or both: (1) depositions and grievance arbitrations, (2) court room trials and court hearings, or (1) depositions and grievance arbitrations and (2) court room trials and court hearings. Each proposal will be ranked according to the criteria described in Section 5 of this RFP. Top ranking candidates will be awarded a contract ("Contract") for each scope of services with the City Attorney's Office to provide court reporting services to the Office of the City Attorney on an as-needed basis for an initial term of two (2) years, with one (1) option to extend for two (2) additional years. Firms under contract with the City Attorney's Office and are currently qualified to provide court reporting services for either of or both (1) depositions and grievance arbitrations and (2) court room trials and court hearings for the Office of the City Attorney will be provided the option to extend their contract for two (2) additional years in order to continue their work for the City Attorney's Office.

The City Attorney's Office is not guaranteeing any amount of work to any selected firm.

#### 1B. Schedule

##### 1.1 Schedule.

The following schedule sets forth the timetable for the selection of contractors.

Issuance of this RFP	<b>November 12, 2015</b>
Deadline for submission of written questions or requests for clarification	<b>November 24, 2015</b>
Submission Deadline	<b>December 15, 2015 at 5:00 p.m.</b>

#### 2. SCOPES OF WORK – *Depositions and Trials and Court Hearings*

##### 2. A Nature of Proposals

The City Attorney's Office is seeking proposals for both of the scopes of services listed below. A proposing firm may submit proposals for **one or both of the services detailed**. The proposals will be evaluated independently, acceptance of a proposal in one category does not mean that

a firm will qualify for a contract in both fields. **In order to receive a contract for both fields, a proposer must submit two separate qualifying proposals.**

## **2.B Scope 1 – Deposition Services**

The City Attorney's Office ("Office") currently employs approximately 100 litigating attorneys. These attorneys work on a variety of different types of lawsuits and are involved in a heavy volume of depositions of percipient witnesses, parties and expert witnesses. The Office is seeking to engage the services of firms to provide court reporting services for these depositions ("Work"). The main location for the Office is Room 234, City Hall, San Francisco, California. The Office has additional offices located at 1390 Market Street, San Francisco, California; San Francisco International Airport; and, the Port of San Francisco at Pier 1, San Francisco, California. Services may be required in any or all of these various locations and other locations throughout the San Francisco Bay Area.

The following services are required as part of the Work but should not be construed as all inclusive for the purposes of performing court reporting services for the Office.

### **2.B.1 Availability.**

Generally, the Office schedules depositions with two (2) weeks notice. However, selected firms must have the staffing to provide the Office with court reporters with as little as one day's notice.

### **2.B.2 Certified Reporter.**

Selected firms must provide certified shorthand reporters ("CSRs") to the Office for depositions. These CSRs must be able to provide proof of their certification at the deposition.

### **2.B.3 Professional Ability.**

CSRs provided by selected firms must be able to keep pace with normal deposition conversation. These CSRs must also be able to use "TextMap" (version 10) or another real-time capable deposition transcription program compatible with litigation software used by the Office.

### **2.B.4 Promptness.**

CSRs provided by selected firms must be on time for all deposition appointments. Specifically, CSRs must plan to be present in the deposition location and have all necessary equipment set up no less than 20 minutes before the scheduled start time for the deposition.

### **2.B.5 Confirmation of Appointment.**

Selected firms must contact by email or phone the Office the day before each deposition date to confirm the appointment, at no charge to the Office.

#### **2.B.6 After Hours, Weekend, and Holiday work.**

Selected firms must be able to provide CSRs after normal working hours and on weekends and holidays. The assigned CSRs must be available to work through a lunch period or after 5:00 p.m. when requested by the Office.

#### **2.B.7 Completed Transcript – Certified Copy and Sealed Original Transcript.**

**Certified Copy.** Selected firms must provide a completed certified copy of the transcript for review by the witness within a period of no longer than 14 calendar days from the date of the request for said transcript. A completed transcript must include the following:

- a) Certification of original transcript and one copy.
- b) Condensed transcript ("mini") and word index.
- c) CD disk containing transcript with signed certification page.
- d) One completed certified transcript sent by electronic delivery.

**Original Sealed Copy.** The original sealed transcript must be delivered to the Office no later than 60 calendar days from the date it is prepared.

#### **2.B.8 Expedited/Rough Transcripts.**

Selected firms must provide an expedited and/or rough transcript when requested by the Office, within as little as 24 hours or up to one week.

#### **2.B.9 Invoice for Services.**

Selected firms must prepare an invoice for each deposition in accordance with the attached P-500. Invoices for expedited work must state the name of the person who made the request, time and date of the expedited service request. Each deposition shall be separately invoiced. In addition, all invoices must state the date of the deposition or trial or hearing, the name of the Deputy City Attorney present at the deposition or trial or hearing, the case name and docket number and the name of the deponent.

#### **2.B.10 Reproduction Ability.**

Selected firms must have the ability to reproduce photos, drawings, charts, and graphs used in deposition proceedings and to safeguard original exhibits so as to return them in their original condition and sequences.

## **2.B.11 Format of Transcripts.**

- 2.B.11.1** All deposition transcripts shall be prepared and submitted to the Office on 25-line numbered paper.
- 2.B.11.2** The original deposition transcript and one copy shall be suitably bound.
- 2.B.11.3** All deposition transcripts shall be proofread and free of spelling errors prior to submission to the Office.
- 2.B.11.4** Deposition transcripts must be provided by electronic file or delivery, on compact disk ("CD"), along with the paper copy of the transcript, which should contain the CSR's signed certification page. Electronic file shall be:  
**.xmef file (compatible with TextMap) containing linked exhibits**  
**.txt file (compatible with LiveNote and TextMap) of the transcript.**  
**Unitized PDFs of all exhibit documents (a separate PDF for each exhibit)**  
**PDFs of both the full transcript and condensed with word index.**
- 2.B.11.5** Each deposition exhibit shall have a unique and sequential exhibit name and/or number.

## **2.C Scope of Services 2 – Trial and Court Hearing Services**

The City Attorney's Office ("Office") currently employs approximately 100 litigating attorneys. These attorneys work on a variety of different types of civil lawsuits. The Office is seeking to engage the services of firms to provide court reporting services during civil trials and hearings in San Francisco Bay Area superior courts and federal courts. Services may be required at San Francisco, Alameda, Contra Costa, Santa Clara or other Superior Courts of California throughout the San Francisco Bay Area, and in the United States District Court for Northern District of California and possibly in other offices within the San Francisco Bay Area.

The scope of work includes, but is not is not limited to , the following court reporting services during hearings or trials for the Office.

### **2.C. 1 Availability.**

Generally, the Office receives notice about hearing and trial dates from the court with two (2) weeks notice. However, selected firms must have the sufficient staff to provide the Office with court reporters with as little as one day's notice.

### **2.C.2 Certified Reporter.**

Selected firms must provide certified shorthand reporters (“CSRs”) to the Office for trials or hearings in superior court, federal court, or other offices within the San Francisco Bay Area. These CSRs must be able to provide proof of their certification prior to the hearing or trial for which they will provide services.

### **2.C.3 Professional Ability.**

CSRs provided by selected firms must be able to accurately keep pace with all persons speaking during a trial or hearing and accurately identify the parties speaking. CSRs must also be equipped to provide realtime services during trial in the courtroom by hookup to the computers used by the judge and counsel.

### **2.C.4 Promptness.**

CSRs provided by selected firms must be on time for all trial or hearing proceedings. Specifically, CSRs must plan to be present in the location of the trial or hearing and have all necessary equipment set up no less than 20 minutes before the scheduled start time for the hearing or trial.

### **2.C.5 Confirmation of Appointment.**

Selected firms must call or email the requestor of the court reporting service the day before each trial date to confirm the date and time, at no charge to the Office.

### **2.C.6 After Hours, Weekend, and Holiday work.**

Selected firms must be able to provide CSRs after normal working hours and on weekends and holidays. The assigned CSRs must be available to work through a lunch period or after 5:00 p.m. when requested by the Office.

### **2.C.7 Completed Transcript – Certified Copy and Original Sealed Copy.**

Selected firms must provide a completed certified copy of the transcript within a period of no longer than 14 calendar days from the date of the request for said transcript. A completed transcript must include the following:

- a) Certification of original transcript and one copy.
- b) Condensed transcript (“mini”) and word index.

The original, sealed transcript should be delivered to our office no later than 14 calendar days from when it is prepared.

### **2.C.8 Expedited and/or Rough Transcript.**

Selected firms must provide an expedited rough transcript when requested by the Office, within as little as 24 hours or one week.

### **2.C.9 Invoice for Services .**

Selected firms must prepare an invoice for each trial or hearing conducted in court in accordance with the attached P-500. Invoices must also state the date(s) of court reporting services, the name of the Deputy City Attorney present at the trial or hearing, and the case name and docket number. In addition, invoices for expedited work must state the name of the person requesting the expedited work, time and date of the expedited service request.

### **2.C.10 Reproduction Ability.**

Selected firms must have the ability to reproduce photos, drawings, charts, and graphs used in court trials or hearings and to safeguard original exhibits so as to return them in their original condition and sequences.

### **2.C.11 Format of Transcripts.**

**2.C.11.1** All trial and hearing transcripts shall be prepared and submitted to the Office on 25-line numbered paper.

**2.C.11.2** The original trial or hearing transcript and one copy shall be suitably bound.

**2.C.11.3** All trial or hearing transcripts shall be proofread and free of spelling errors prior to submission to the Office.

**2.C.11.4** Trial or hearing transcripts must be provided by electronic file and/or electronic delivery, on compact disk ("CD"), along with the paper copy of the transcript which should contain the CSR's signed certification page.

Electronic file shall be:

**.xmef file (compatible with TextMap) containing linked exhibits**

**.txt file (compatible with LiveNote and TextMap) of the transcript.**

**Unitized PDFs of all exhibit documents (a separate PDF for each exhibit)**

**PDFs of both the full transcript and condensed with word index.**

**2.C.11.5** Each trial or court hearing exhibit shall have a unique and sequential exhibit name and or number.



### 3. SUBMISSION REQUIREMENTS

#### 3.1 Time and Place for Submission of Proposals.

**Proposals must be received no later than 5:00 p.m. on Submission Deadline of December 15, 2015.** Postmarks will not be considered in judging the timeliness of the submission. Proposals may be delivered in person or sent via courier or U.S. Mail to:

**MARY JANE WINSLOW  
San Francisco City Attorney's Office  
1390 Market Street, 7th Floor  
San Francisco, CA. 94102**

Other means of transmission (including facsimile) will not be accepted. Late submissions will not be considered.

#### 3.2 Format.

The proposal shall be typed on white, letter-sized recycled paper, print double-sided to the maximum extent practical, and bind each copy individually. To respond to this RFP, a candidate must submit **two (2) copies** of its proposal in a sealed envelope that is clearly marked **Court Reporter Services** on or before the submission deadline set forth in Section 1.1 of this RFP ("Schedule"). Because proposers may submit multiple proposals, **please indicate clearly whether the content is for: Depositions (Scope of Services #1) and/or Trials and Court Hearings (Scope of Services #2).**

#### 3.3 Content.

Firms interested in responding to this RFP must submit the following information in the order specified below, labeled and indexed:

**3.3.1 Letter of Introduction.** A letter of introduction signed by a person authorized by your firm to obligate your firm to perform the commitments contained in your proposal. Submission of this letter will constitute a representation by your firm that your firm is willing and able to perform the commitments contained in the proposal.

**3.3.2 Description of Firm.** A description of the firm's organizational structure (e.g., corporation, partnership, limited liability company), the jurisdiction in which the firm is organized and date of such organization, and a description of the firm's primary business.

**3.3.3 Authorized Representative.** The **name, title, address, email address, telephone number**, and facsimile number **of the person authorized to represent the firm with respect to all notices, discussions, and other communications relating to this RFP.**

**3.3.4 Written Representation re Good Standing, Licenses, Etc.** A representation that the firm is in good standing in the State of California and has all necessary licenses, permits, approvals and authorizations necessary in order to perform the Work and conduct the firm's business.

**3.3.5 Written Representation re City Contracting Requirements.** A representation that the firm is able and willing to comply with all of the contracting requirements described in Section 7 of this RFP. **The following documents should be submitted as part of the RFP Response:**

1. W-9 Form (Taxpayer ID Number)
2. San Francisco Business Tax Declaration (Form No. P-25) or San Francisco Business Tax Certificate
3. S. F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits.

**Note:** Form submission to the Contracts Monitoring Division (CMD) is not complete if it does not include the additional documentation requested on the form. Other documentation may be required by CMD depending on the respondent's answers on this form.

4. Evidence of insurance as specified in Section 15 of the Agreement for Professional Services, P-500, in Appendix B.

**3.3.6 Experience.** A brief general description of relevant previous and/or current experience pertaining to providing similar services to the legal profession during the past two (2) years, particularly for public agency clients, that demonstrates the firm's ability to perform the necessary services. **Separate descriptions are required for those submitting proposals in both scopes of work.**

**3.3.7 Minimum Qualifications.** A brief description of how firm meets each one of the minimum qualifications specified in Section 3 and plans to satisfy the Scope of Work specified in Section 2 of this RFP. Separate descriptions are required for those submitting proposals in both scopes of work.

**3.3.8 Relevant Experience and Work History of CSRs.** Relevant experience and length of tenure of the CSRs who will be performing the Work, particularly for public agency clients. Separate sections are required for those submitting proposals in both scopes of work.

**3.3.9 Number of CSRs.** Provide the number of CSRs who will be performing the Work. Separate sections are required for those submitting proposals in both scopes of work.

**3.3.10 Current Client References.** A list of three current client references (within the past two (2) years) that includes:

- Client's name and address;
- Contact person;

- Title of contact person;
- Telephone number;
- Dates services provided;
- Brief description of work completed for the client;
- A statement of express permission for the City to contact any identified previous client and request information on the performance of the candidate.

**3.3.11 Additional Data.** Any other relevant information the firm believes essential to assist in the evaluation of the proposal shall be clearly stated. If there is no additional data the firm wishes to present, this section will consist of the statement, "There is no other data we wish to present." Separate sections are required for those submitting proposals in both scopes of work.

**3.4 Fee Schedules – (1) Depositions and Grievance Arbitrations and  
(2) Court Room Trials and Hearings.**

The Fee Schedules for Court Reporters which follows, filled in with firm's rates for each item. Please note that we have included a Not to Exceed Rate for each item. Bidders who bid higher than those rates in any category will not be deemed qualified. The Not to Exceed rates are considered price ceilings, and the City Attorney's Office welcomes lower bids. In selecting contractors to perform work during the life of the contracts, price will be consideration for the City Attorney's Office. **A separate Fee Schedule is required as part of each proposal for those submitting proposals in both scopes of work.**

**(1) DEPOSITION AND GRIEVANCE ARBITRATION -- FEE SCHEDULE for COURT REPORTERS**

This fee schedule applies to all court reporting services provided to the San Francisco City Attorney's Office (including those in which a party other than the City notices a deposition). The City Attorney's Office will not pay for deposition or grievance arbitration costs that do not comply with this Fee Schedule. Services for which there is no additional charge are specified in Section 3.4.1.

<b>DESCRIPTION OF SERVICE – NAME OF VENDOR</b>	<b>NOT TO EXCEED RATE</b>	<b>YOUR BID RATE</b>
1. <b>Non- Expert Witness</b> Per page fee for non-expert witness including: preparation of certified and original copy, per diem, condensed transcript ("mini") and word index, E-transcript* and/or CD ROM. <b>*E-transcripts to include electronic formats: .PXT, .TXT and .XMEF (with linked exhibits), and CSR's signature on the certification page.</b>	\$5.05	
2. Minimum charge for #1 above	\$295.00	
3. <b>Expert Witness</b> Per page fee for expert witness including: preparation of original and certified copy, per diem, condensed transcript ("mini") and word index, E-transcript* and/or CD ROM. <b>*E-transcripts to include electronic formats: .PXT, .TXT and .XMEF (with linked exhibits), and the CSR's signature on the certification page.</b>	\$5.35	
4. Minimum charge for #3 above	\$325.00	
5. Expedited completed original transcript (including delivery by email): 24 HRS. (1 DAY) 72 HRS. (2 DAYS) 4 DAYS – 1 WEEK	24 HRS. (1 DAY) 100% mark-up 72 HRS. (2 DAYS) 80% mark-up 4 DAYS – 1 WEEK 50% mark-up	
6. Per page for an extra certified copy	\$1.30	
7. Minimum charge for #6 above.	\$52.50	
8. Per page for exhibit copying – 8 ½ x 11, black & white	\$.40	
9. Per page for exhibit copying – 8 ½ x 11, color	\$1.05	
10. Maximum cost per page for exhibit scanning	\$.40	
11. CSR's wait time fee over 30 minutes (no charge under 30 mins.)	\$50.00 per hour	
12. Cancellation fee after 5 p.m. of prior business day (no charge before 5 pm)	\$162.25	
13. Statement on the Record	\$250.00	
14. Real-time services: (Please specify any fee that is charged for "real-time" services and is billed in addition to per page or per hour rate)	\$1.60 per page	
15 Expedited rough draft transcript per page cost	\$1.50	
16. Maximum witness non-appearance fee- CSR wait time	\$162.25 per hour	

included		
17. Maximum cost for deposition when no transcript ordered	\$162.25 per hour	
18. Delivery by messenger to Office per delivery of one or more transcripts	\$28.00	
19. Overnight delivery to Office per delivery of one or more transcripts	\$28.00	
20. Transcript Delivery by U.S. Postal Mail	\$12.00	
21. Percentage discount for services provided when ten or more depositions are required for a single case.	5%	
22. Video service (if available), per hour	\$92.00	
23. Videofile: with synchronization – Based on total number of minutes on the record.	\$1.25 p/minute of total minutes on the record	
24. Videofile: without synchronization	\$35 p/testimony hour	

**3.4.1 No Additional Charge. Services for which there is no additional charge include, but may not be limited to, the following:**

- **Handling, Processing or Administrative Fee**
- Certification Fee
- Parking
- Delivery of certified, expedited transcript via email
- Word indexing (included in per page transcript fee)
- Attachment and handling of original exhibits (but not scanning or copying)
- Notary fee
- Wait time less than 30 minutes
- Overtime
- Weekend or holiday appearance
- Travel time
- Mileage
- Administration of oath
- Telephone reporting
- Cancellation of a court reporter or videographer at any time before 5:00 p.m. the day before a scheduled assignment.

**(2) COURT ROOM TRIALS AND HEARINGS -- FEE SCHEDULE for COURT REPORTERS**

This fee schedule applies to all court reporting services provided to the San Francisco City Attorney’s Office during court proceedings. The San Francisco City Attorney’s Office will not pay for costs that do not comply with this Fee Schedule. Services for which there is no additional charge are specified in Section 3.4.2.

DESCRIPTION OF SERVICE - <b>NAME OF VENDOR</b>	NOT TO EXCEED RATE	YOUR BID RATE
1. Court Appearances: Half Day Trial, Hearing	\$285.00	
Full Day Trial, Hearing (Half Day and Full Day Court Appearance Fees are not chargeable when a court appearance is cancelled before or after 5 pm the day before the scheduled court appearance.)	\$565.00	
2. Maximum Cancellation Fee: The Cancellation Fee is chargeable when cancellation is made after 5 pm the day before the scheduled court proceeding.	\$155.00	
3. Transcript: Per page for original and certified copy (Rates are based on 25-line Per Page Format and Minimum Transcript Format Standards)	\$ 5.00 p/page	
4. Expedited Transcript: Same Day	120%	
Next Day	100%	
2-3 Business Days	75%	
4-5 Business Days	50%	
6-9 Business Days	25%	
5. Expedited <b>Rough</b> Electronic Transcript During Trial: Next Day (with purchase of full transcript)	\$1.50 per page	
6. Transcript by messenger service to Office per delivery in one box of one or more transcripts:	\$30.00 per package delivery	
7. Transcript Delivery by U.S. Postal Mail:	\$12.00	
8. Transcript Delivery by Other Delivery Service or Vendor Drop Off per delivery in one box of one or more transcripts	\$28.00	
9. Real-time Service to Judge/Counsel: (Please specify any fee that is charged for "real-time" services and is billed in addition to per page rate)	\$1.60 per page	
10. Court of Appeal Transcript: Change cover page, Repaginate, and Reprint New Original Transcript, including exhibits.	\$1.25 p/page	

**3.4.2 No Additional Charge. Services for which there is no additional charge include, but may not be limited to, the following:**

- **Handling, Processing or Administrative Fee**
- Certification Fee
- Parking
- Delivery of certified, expedited transcript via email
- Word indexing (included in per page transcript fee)

- Attachment and handling of original exhibits (but not scanning or copying)
- Notary fee
- Wait time less than 30 minutes
- Overtime
- Weekend or holiday appearance
- Travel time
- Mileage
- Administration of oath
- Telephone reporting
- Cancellation of a court reporter or videographer at any time before 5:00 p.m. the day before a scheduled assignment.

#### 4. MINIMUM QUALIFICATIONS

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.

**4.1 Primary Business.** Selected firms must be primarily engaged in the business of providing court reporting services or court reporting and other support services to the legal profession. They must be capable of providing CSRs in the Bay Area with appropriate equipment as requested by the Office with as little as 24 hours notice.

**4.2 Good Standing, Licenses, Etc.** If not an individual, the selected firms must be a validly existing legal entity, qualified to do business and in good standing in the State of California. In addition, each qualified firm must have all necessary licenses, permits, software to conduct business before California courts, approvals and authorization in order to perform the Work and conduct the firm's business.

**4.3 Other City Contracting Requirements.** Selected firms must be willing and able to comply with the City contracting requirements set forth in Section 7 of this RFP. It is strongly recommended that firms complete all compliance requirements listed in Appendix A prior to submitting a proposal.

**4.4 Years of Experience.** Selected firms must have at least two (2) years of experience providing court reporting services to private, public, or governmental law offices that are similar to either or both of the scope of services in size and scope.

**4.5 Completed Projects.** Selected firms must have completed at least 200 reporter services similar to either or both of the scope of services in size and scope.

**4.6 Costs.** Selected firms must submit their fee schedule in the format set forth in Section 3.4.



**4.7 Staffing and Equipment.** Selected firms must have management, personnel, and equipment sufficient in number, availability and qualifications to perform either or both of the scope of services in the manner required by the Office, including, without limitation, the following:

- a) Reporter services must be provided only by CSRs. The CSR licensing standards are regarded as a minimum level of professional competence.
- b) Provision of reporter services after normal working hours and on weekends and holidays at locations within the Bay Area.

## **5. EVALUATION AND SELECTION PROCESS**

Each proposal will be evaluated by a selection committee comprised of parties with expertise in court reporter services. Proposals from the same firm for differering scopes of services will be evaluated independantly. The City Attorney's Office intends to evaluate the proposals generally in accordance with the criteria itemized below.

### **5.1 General Qualifications.**

- Record of past performance of the candidate in providing similar services.
- Relevant public-agency experience of the CSRs who will be performing the scope of services.
- Length of tenure of the CSRs who will be performing the scope of services.
- Direct or related experience the candidate has that indicates success in performing the required services as described in RFP in an economical manner.
- A fee schedule that conforms with the Not to Exceed Rates specified by the Office in Section 3.4 of this RFP.

### **5.2 Evaluation and Selection Process**

Proposals will be evaluated and ranked by a selection committee comprised of persons with expertise. The City will then enter into contracts with top ranking firms for each scope of services. At any time during the evaluation process, the City may require a candidate to provide oral or written clarification of its proposal. The proposals will be evaluated on a 100 point scale, with 50 points being awarded on the fee proposal competitiveness and the other 50 points being awarded based on the qualifications and experience.

The City intends to award as-needed contracts to firms that it considers will provide the best overall program services. All prices offered in the proposal must be at or below the price listed as the "Not To Exceed" price. The City Attorney's Office reserves the right to accept other than the lowest price offered, award to all qualified proposers, and to

reject any proposals that are not responsive to this request. The City Attorney's Office will select proposers with whom to commence contract negotiations. The selection of any proposal shall not imply acceptance by the City Attorney's Office of all terms of the proposal, which may be subject to further negotiations and approvals before the City Attorney's Office may be legally bound thereby. If a satisfactory contract cannot be negotiated in a reasonable time, the City Attorney's Office in its sole discretion may terminate negotiations.

## **6. TERMS AND CONDITIONS FOR RECEIPT OF PROPOSALS**

### **6.1 Errors and Omissions in RFP**

Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify the Office, in writing, if the proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to the Office 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.

### **6.2 Inquiries Regarding RFP**

Inquiries regarding the RFP and all notifications of an intent to request written modification or clarification of the RFP, must be directed **via email to [maryjane.winslow@sfgov.org](mailto:maryjane.winslow@sfgov.org)** or by U.S. Postal Mail to:

Mary Jane Winslow  
1390 Market Street, 5th Floor  
San Francisco, CA 94102

### **6.3 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 Office 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.

### **6.4 Change Notices**

The Office may modify the RFP, prior to the proposal due date, by issuing Change Notices, which will be posted on the website. The proposer shall be responsible for ensuring that its proposal reflects any and all Change Notices issued by the Office prior to the proposal due date regardless of when the proposal is submitted. Therefore, the City recommends that the proposer consult the website frequently, including shortly before the proposal due date, to determine if the proposer has downloaded all Change Notices.

### **6.5 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.

#### **6.6 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 the revised 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 Office may require a proposer to provide oral or written clarification of its proposal. The Office reserves the right to make an award without further clarifications of proposals received.

#### **6.7 Errors and Omissions in Proposal**

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

#### **6.8 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.

#### **6.9 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: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) 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:

1. **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.
2. **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.
3. **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

## **6.10 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.

#### **6.11 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.

#### **6.12 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.

#### **6.13 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.

## **7. CONTRACT REQUIREMENTS**

### **7.1 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 B. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsement, 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 Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits, (§34); the Minimum Compensation Ordinance (§43 in the Agreement); the Health Care Accountability Ordinance (§44); the First Source Hiring Program (§45); and applicable conflict of interest laws (§23), as set forth in paragraphs B, C, D, E and F below.

### **7.2 Nondiscrimination in Contracts and Benefits**

The successful proposer will be required to agree to comply fully with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Chapter 12C requires nondiscrimination in contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the HRC's website at [www.sfhrc.org](http://www.sfhrc.org).

### **7.3 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.

For the amount of hourly gross compensation currently required under the MCO, see [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract.

Additional information regarding the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco).

#### **7.4 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 [www.sfgov.org/olse/hcao](http://www.sfgov.org/olse/hcao).

#### **7.5 First Source Hiring Program (FSHP)**

If the contract is for more than \$50,000, then the First Source Hiring Program (Admin. Code Chapter 83) may apply. 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](http://www.sfgov.org/moed/fshp.htm) and from the **First Source Hiring Administrator, (415) 401-4960**.

#### **7.6 Conflicts of Interest**

The successful proposer will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including 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. The successful proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the successful proposer might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful proposer that the City has selected the proposer.

### **8. PROTEST PROCEDURES**

#### **8.1 Protest of Non-Responsiveness Determination**

Within five 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 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.

### **8.2 Protest of Contract Award**

Within five 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 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.

### **8.3 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 made orally (e.g., by telephone) will not be considered. Postmarks will not be considered in judging the timeliness of the protest. Protests may be delivered in person or sent via courier or U.S. Mail to:

Mary Jane Winslow  
San Francisco City Attorney's Office  
1390 Market Street, 7th Floor  
San Francisco, CA. 94114



**Appendix A  
Standard Forms**

Before the City can award any contract to a contractor, that contractor must file three 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](mailto: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 in the Controller's Office at (415) 554-6702.

Item	Form name and Internet location	Form	Description	Return the form to: For more info
1.	Request for Taxpayer Identification Number and Certification  <a href="http://www.sfgov.org/oca/purchasing/forms.htm">www.sfgov.org/oca/purchasing/forms.htm</a>  <a href="http://www.irs.gov/pub/irs-fill/fw9.pdf">www.irs.gov/pub/irs-fill/fw9.pdf</a>	W-9	The 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.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102  (415) 554-6702
2.	Business Tax Declaration  <a href="http://www.sfgov.org/oca/purchasing/forms.htm">www.sfgov.org/oca/purchasing/forms.htm</a>	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.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102  (415) 554-6702

3.	<p>S.F. Administrative Code                  Chapters 12B &amp; 12C                  Declaration: Nondiscrimination                  in Contracts and Benefits</p> <p><a href="http://www.sfgov.org/oca/purchasing/forms.htm">www.sfgov.org/oca/purchasing/forms.htm</a></p> <p>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 answers on this form. <b>(Note: Contract-to-Contract Compliance Status -- vendors must fill out this form for each contract with the City.)</b></p>	<p>Contract Monitoring Division                  30 Van Ness Ave.,                  Suite 200                  San Francisco, CA.                  94102                  415-581-2303                  Sfgov.org/cmd</p>
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**Where the forms are on the Internet**

**Office of Contract Administration**

Homepage: [www.sfgov.org/oca/](http://www.sfgov.org/oca/)  
 Purchasing forms: Click on "Required Vendor Forms" under the "Information for Vendors and Contractors" banner.

**GSA – Office of the City Administrator, Contracts Monitoring Division (CMD)**

CMD's homepage: [www.sfgov.org/cmd](http://www.sfgov.org/cmd)  
 Equal Benefits forms: Click "Equal Benefits Program" in the column on the left side of the page.

**Appendix B**  
**Agreement for Professional Services**  
**P-500**

**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,

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 and no ".00"]. 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.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by 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. 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. 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.** 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 the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. 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. Disallowance.** If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

## **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 be endorsed to provide:

- 1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
- 2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

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

**d.** All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

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

**f.** Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense



costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

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

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

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

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

**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.

**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. Left Blank by Agreement of the Parties.**

**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. Submitting False Claims; Monetary Penalties.     | 37. Drug-free workplace policy        |
| 10. Taxes   | 53. Compliance with laws              |
| 15. Insurance                                       | 55. Supervision of minors             |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment                                      | 58. Graffiti removal                  |

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**

This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

- |   |   |
|---|---|
| 8. Submitting false claims                                      | 24. Proprietary or confidential information of City     |
| 9. Disallowance   | 26. Ownership of Results                                |
| 10. Taxes   | 27. Works for Hire                                      |
| 11. Payment does not imply acceptance of work                   | 28. Audit and Inspection of Records                     |
| 13. Responsibility for equipment                                | 48. Modification of Agreement.                          |
| 14. Independent Contractor; Payment of Taxes and Other Expenses | 49. Administrative Remedy for Agreement Interpretation. |
| 15. Insurance   | 50. Agreement Made in California; Venue                 |
| 16. Indemnification   | 51. Construction  |
| 17. Incidental and Consequential Damages                        | 52. Entire Agreement                                    |
| 18. Liability of City   | 56. Severability  |
|   | 57. Protection of private information                   |

Subject to the immediately preceding sentence, 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, and e-mail address; fax number is optional]**

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

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 12O 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. 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. 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. 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. 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. Left Blank by Agreement of the Parties.**

**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 the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. 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. Contractor further agrees to provide to City the names of each person, entity or committee described above.

#### **43. Requiring Minimum Compensation for Covered Employees**

**a.** 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 Sections 12P.5 and 12P.5.1 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/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

**b.** The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. 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. 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.

**c.** Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

**d.** Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

**e.** The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

**f.** Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

**g.** Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under

Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. 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 shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

**h.** 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.

**i.** 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, 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 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 section 12Q.5.1 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](http://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

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.

**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, "Modification of Agreement."

**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. Left Blank by Agreement of the Parties.**

**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. Left Blank by Agreement of the Parties.**

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

**62. Left Blank by Agreement of the Parties.**

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

<b>CITY ATTORNEY'S OFFICE</b>	<b>CONTRACTOR</b>
Recommended by:	<b>[company name]</b>
_____ <b>[name]</b> <b>[title]</b> <b>[department]</b>	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.
Approved as to Form:	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.
Dennis J. Herrera City Attorney	_____ <b>[name of authorized representative]</b> <b>[title]</b> <b>[address]</b> <b>[city, state, ZIP]</b>
By: _____ Deputy City Attorney	City vendor number: <b>[vendor number]</b>
Approved:	

**Appendices**

- A: Services to be provided by Contractor
- B: Calculation of Charges

**Appendix A**  
**Services to be provided by Contractor**

**1. Description of Services**

Contractor agrees to perform the following services:

**2. Reports**

Contractor shall submit written reports as requested by the **[insert name of department]**. Format for the content of such reports shall be determined by the **[insert name of department]**. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

**3. Department Liaison**

In performing the services provided for in this Agreement, Contractor's liaison with the **[insert name of department]** will be **[insert name of contact person in department]**.

**Appendix B**  
**Calculation of Charges**

