

City and County of San Francisco

Request for Qualifications for

**Legal Services for the Urban Areas Security Initiative
Approval Authority Board (DEM/UASI)**



Date issued:	AUGUST 22, 2011
Pre-submission conference:	10:00_A.M., September 15, 2011
Submissions due:	12:00 P.M., September 30, 2011

Request for Qualifications for Legal Services for the Urban Areas Security Initiative Approval
Authority Board

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Appendices:

- A. HRC Attachment 2: Requirements for Architecture, Engineering and Professional Services Contracts, for contacts \$29,000 and over (separate document). Proposers must submit the following forms: separate document
- Form 2A HRC Contract Participation form
 - Form 2B HRC “Good Faith” Outreach Requirements form
 - Form 3 HRC Non-discrimination Affidavit
 - Form 5 HRC Employment form
- The following form may be required, depending on the circumstances:
- Form 4 Joint Venture Participation Schedule
- B. Standard Forms: Listing and Internet addresses of Forms related to Taxpayer Identification Number and Certification, to Business Tax Declaration, and to Chapters 12B and 12C, and 14B of the S.F. Administrative Code. B-1
- C. Agreement for Professional Services (form P-500) separate document

**Request for Qualifications for
Legal Services for the Urban Areas Security Initiative
Approval Authority Board**

I. Introduction and Schedule

A. General

The City and County of San Francisco (“City” or “San Francisco”), through the Department of Emergency Management (“DEM”), seeks to establish a pool (“Pool”) of pre-qualified law firms, law offices or attorneys (“Firms”) to provide general counsel services to the Bay Area UASI Region Approval Authority (“Approval Authority”), as set forth more specifically in this Request for Qualifications (“RFQ”).

B. The Bay Area UASI Region Approval Authority

In connection with application for and distribution of federal Urban Areas Security Initiative (“UASI”) grant funds, the United States Department of Homeland Security (“DHS”) consolidated the separate San Jose, Oakland, and San Francisco Urban Areas into a combined Bay Area Urban Area (“BA Urban Area”). The BA Urban Area includes three major cities (San Francisco, Oakland, and San Jose), ten counties (Alameda, Santa Clara, Santa Cruz, San Mateo, San Francisco, Marin, Sonoma, Napa, Solano, and Contra Costa), over 100 incorporated cities, a number of special districts and transportation agencies, and several airports.

San Francisco, the City of Oakland, the City of San Jose, Alameda County and Santa Clara County entered a Memorandum of Understanding (“MOU”) that among other things established the Approval Authority as the Urban Area Working Group for the BA Urban Area. Currently the Approval Authority is a seven member body, with its composition set in the MOU. The role of the Approval Authority is to provide overall governance of the homeland security program across the BA Urban Area, to coordinate development and implementation of all UASI Program initiatives, and to ensure compliance with all UASI Program requirements. Since it was established, additional federal homeland security grant programs have come under the direction of the Approval Authority, specifically the Interoperable Emergency Communications Grant Program (“IECGP”) and the Regional Catastrophic Preparedness Grant Program (“RCPGP”). Copies of the current Memorandum of Understanding between the parties, as well as the First Amendment and Second Amendment to that MOU, are attached as **Appendix D** to this RFQ. A copy of the current draft successor Memorandum of Understanding (“Successor MOU”) is attached as **Appendix E**. The Approval Authority has approved this version of the Successor MOU, and that agreement is pending approval by the parties. The Successor MOU expands the parties to include Contra Costa County, Marin County, Monterey County, San Mateo County and Sonoma County, and expands the composition of the Approval Authority. The Approval Authority recently adopted By-Laws. A copy of those By-Laws is attached to the RFQ as **Appendix F**.

The Approval Authority meets every month, with special meetings as needed. The Approval Authority conducts its meetings in compliance with Ralph M. Brown Act. Information about the Approval Authority is available on the Bay Area UASI website: <http://www.bayareauasi.org/default.aspx>.

The Approval Authority is supported by the Bay Area UASI General Manager, currently a City employee, who is responsible for implementing and managing the policy and program decisions of the Approval Authority, directing the work of the UASI Management Team personnel, and performing other duties as determined and directed by the Approval Authority.

C. The Role of the City and County of San Francisco

Under the MOU, San Francisco is designated as the grantee for UASI grant funds granted to the BA Urban Area, with responsibility to establish procedures and execute agreements as directed by the Approval Authority. San Francisco is also the grantee for IECGP and RCPGP funds. In addition, under the MOU, the parties designated San Francisco to serve as the Fiscal Agent for the Approval Authority, and to establish procedures and provide all financial services for distribution of UASI and other grant funds within the BA Urban Area.

The San Francisco City Attorney’s Office represents the City in its capacity as primary grantee and fiscal agent to the Approval Authority. In this role, the Office advises on procurement and contracting issues, and approves as to form grant-funded contracts and subgrant agreements. In addition, the San Francisco City Attorney’s Office advises the City through its representatives on the Approval Authority and its employees working as the General Manager and as members of the UASI Management Team. The City Attorney’s Office has not represented and does not currently represent the Approval Authority as a body. In addition, City Attorneys and County Counsels from the other parties to the MOU may represent and advise the individuals from the represented jurisdiction in connection with their work on the Approval Authority or UASI Management Team. Currently, there is no public law office, private firm or attorney advising the Approval Authority as a body.

D. Nature of the Proposed Legal Work

On certain occasions, the Approval Authority has need of legal counsel to provide advice to the body on various matters pertaining to open meetings, grants administration, or other issues that may arise. This RFQ requests submissions of qualifications to pre-qualify Firms to advise the Approval Authority on these matters, for inclusion in the Pool, which will be established for a term ending on or about June 30, 2014.

Any contracts entered with a Firm from the Pool will be funded out of UASI or other homeland security grant funds. Approximately Fifty Thousand Dollars (\$50,000) per year is allocated for legal counsel services to the Approval Authority.

E. Term of the Proposed Contract and Options for Extensions

Any contracts entered with a Firm from the Pool may have an original term of up to 2 years. In addition, the City may have up to 2 options to extend the term of any contract for a period of up to 1 years each, which the City may exercise in its sole, absolute discretion.

F. Schedule

The anticipated schedule for establishing a Pool is:

<u>Proposal Phase</u>	<u>Date</u>
RFQ is issued by the City	August 22, 2011
Pre-submission conference	September 15, 2011, 10 A.M.
Deadline for submission of written questions or requests for clarification	September 19, 2011, 5:00 P.M.
UASI to post written response to questions or requests for clarifications	September 24, 2011, 5:00 P.M.
Submissions due	September 30, 2011, 12:00 P.M.
Oral interview (if applicable)	October 6, 2011

RFP for Legal Services for the Urban Areas Security Initiative Approval Authority Board

Notify Firms of final selection for
Inclusion in the Pool

October 21, 2011

II. Scope of Work

It is the objective of this RFQ to pre-qualify a Pool of Firms for legal counsel services for the Approval Authority. The Scope of Work described is to be used as a general guide and is not intended to be a comprehensive list of all work necessary to provide legal services to the Approval Authority. The itemized list below represents those tasks identified as minimally required to meet the objectives set forth in this Scope.

All work listed below will be subject to the review and approval of the Approval Authority.

- A. Provide legal services to the Approval Authority, including oral and written advice, in connection with the administration of regional Homeland Security Grant funds:
 - 1. Provide legal research, interpretation and advice regarding the UASI Grant Program, IECGP and RCPGP.
- B. Analyze facts, apply legal principles and precedents, provide oral and written advice on the following:
 - 1. Be able to apply specific legal authorities related to California municipal law, administrative procedures, the Ralph M. Brown Act, the California Public Records Act, or other assigned areas of practice;
 - 2. Describe the relationship between legal counsel for the Approval Authority and City Attorneys and/or County Counsels;
 - 3. Develop, prepare and present legal issues that may require appearances before administrative, legislative and/or judicial bodies.
- C. Attend all Approval Authority meetings (unless excused from attendance prior to the meeting) and provide advice at those meetings on open meeting issues, parliamentary procedures and any potential conflict issues, as requested.
- D. Provide legal services for additional matters as requested by the Approval Authority, including responding to inquiries from third parties.

III. Submission Requirements

A. Time and Place for Submission of Qualifications

Submissions must be received by 12:00 P.M., on **September 30, 2011**. Postmarks will not be considered in judging the timeliness of submissions. Submissions may be delivered in person and left with or mailed to:

Jada Winfrey, Administrative Manager
Bay Area UASI
10 Lombard Street, Suite 410
San Francisco, CA 94111

Firms shall submit **10** copies of the submission and two copies, separately bound, of required HRC Forms in a sealed envelope clearly marked **Legal Services for the Urban Areas Security Initiative Approval Authority Board** to the above location. Submissions by fax will not be accepted. Late submissions will not be considered.

B. Format

The UASI Management Team will place submissions in three-ring binders for the review panel. Please use three-hole recycled paper, print double-sided to the maximum extent practical, and bind the proposal with a binder clip, rubber band, or submit it in a three-ring binder. Please do not bind your proposal with a spiral binding, glued binding, or anything similar. You may use tabs or other separators within the document.

For word processing documents, the UASI Management Team prefers that text be unjustified (i.e., with a ragged-right margin) and use a serif font (e.g., Times Roman, and not Arial), and that pages have margins of at least 1” on all sides (excluding headers and footers).

If your response is lengthy, please include a Table of Contents.

You must also submit an electronic version of the submission.

C. Content

The City will establish a Pool of pre-qualified Firms based on specific qualifications, experiences and expertise demonstrated in response to questions asked in this RFQ and such other factors the City deems important. The qualifications, experience and expertise of key individuals, especially the lead attorney(s) assigned to the engagement, will carry significant weight in the selection process.

The City is not seeking a general resume of the firm and may deem non-responsive submissions that merely provide such generalities. Where applicable, responses should include factual examples that demonstrate the expertise of the assigned staff. Please note that the prior written consent of the City is required prior to the substitution of any personnel listed in the Firm's submission.

Responses to the following questions will allow the City to evaluate the Firm's expertise. In responding to this RFQ, please discuss only those areas in which the Firm has a demonstrable expertise or experience.

Make sure that each section responds to the questions asked, and includes all items requested. Only material contained in the body of the submission will be considered. The selection panel will not review information provided in appendices, except where such appendices are specifically requested by this RFQ. Information that is responsive to more than one section of the response, such as summaries of prior engagements, may be cross-referenced in the appropriate sections.

Firms interested in responding to this RFQ must submit the following information, in the order specified below:

1. Introduction and Executive Summary (up to 2 pages)

Submit a letter of introduction and executive summary regarding the Firm, its attorneys and their experience and qualifications. The letter should also demonstrate how the Firm meets the minimum qualifications for inclusion in the Pool generally. The letter must be signed by a person authorized to obligate the Firm to perform the commitments contained in the submission. Submission of the letter will constitute a representation by the proposer that the proposer is willing and able to perform the commitments contained in the proposal.

2. Firm Qualifications (up to 3 pages)

Provide information on the Firm's and its attorneys' background and qualifications, including the following:

- a. Name, address, and telephone number of a contact person;
- b. A brief description of the Firm, including a description of the Firm's operations in the Bay Area; and

c. A description between three to four representations similar in size and scope performed by the Firm, including client, reference and telephone numbers, attorneys and staff who worked on each project, budget, schedule and project summary. Descriptions should be limited to one page for each representation.

3. Staff Qualifications (up to 4 pages)

In the selection process, the City will closely examine the qualifications, experience and expertise of the key attorneys and non-attorney staff proposed by the Firm. Consequently, no substitution of personnel is permitted without the City's prior written approval. Please provide the following information:

a. A list identifying: (1) each key person on the project team, and for each attorney, the year admitted to practice law in California and Bar Number, (2) the project manager, (3) the role each will play in the representation, and (4) a written assurance that the key individuals listed and identified will be performing the work and will not be substituted with other personnel or reassigned to another project without the City's prior written approval.

b. Provide a description of the experience and qualifications of the project team members, including brief resumes if necessary.

4. References

Provide references for the Firm or the key attorney(s) proposed to perform the work, including the name, address and telephone number, from at least 2 but no more than 4 recent clients (preferably other public agencies).

5. Potential Conflicts and Pending Litigation (no page limit)

Describe any representation by proposer of or adverse to San Francisco, the City of Oakland, the City of San Jose, the County of Alameda, the County of Santa Clara, the County of Contra Costa, the County of Marin, the County of Monterey, the County of San Mateo and the County of Sonoma.

Describe any representations or other work that may present an actual or potential conflict of interest for the Firm in representing the Approval Authority, and how the Firm anticipates addressing those conflicts.

6. Fee Proposal

The City and Approval Authority intend to award any contracts to Firms from the Pool that it considers will provide the best overall legal services. The City and Approval Authority reserve the right to accept other than the lowest priced offer and to reject any submissions that are not responsive to this request.

Please provide a fee proposal that includes the following:

a. Hourly rates for all team members; and
b. Any charges for costs and out of pocket expenses incurred in performing services.

Hourly rates and itemized costs may be used to negotiate changes in the Scope of Work if necessary.

IV. Evaluation Criteria and Selection Process

A. Minimum Qualifications

A Firm must meet the following minimum qualifications by the deadline for submittal of submissions:

1. The Firm and the key attorney(s) shall possess a minimum of three (3) years experience in providing legal services as described in the RFQ;
2. The Firm shall have a local presence in the San Francisco Bay Area, and the key attorney(s) shall be able to respond within the same business day to accommodate impromptu meetings as they arise;
3. Each attorney identified in the submission shall be admitted to practice law in the State of California, and shall have no history of discipline imposed by the California Bar Association; and
4. The Firm shall be eligible to receive federal grant funds and must be able to execute Appendix C of the City's contract, U.S. Department of Homeland Security's Urban Areas Security Initiative Grant Program Requirements for Procurement Contracts.

Any submission that does not demonstrate that the Firm meets these minimum requirements by the deadline for submissions will be considered non-responsive and will not be eligible for inclusion in the Pool.

B. Desirable Qualifications

The following are desirable qualifications for Firms and the key attorney(s):

1. Six (6) years experience in providing legal services as described in the RFQ;
2. Experience advising public entities;
3. Experience advising legislative bodies at meetings;
4. Experience with regional bodies, groups and projects; and
5. Experience advising regarding federal and state homeland security grant programs.

C. Selection Process

The submissions will be evaluated by a selection committee comprised of parties with expertise in governmental processes and a familiarity with the administration of grants. For those Firms submitting statements of qualifications that are responsive to all of the minimum qualifications and other requirements in this RFQ, the committee will evaluate the strength of the responses based on the following criteria.

1. Firm and Staff Qualifications

- a. Expertise of the firm in the fields necessary to complete the tasks, including desirable qualifications;
- b. Recent experience of the Firm and key attorney(s) and staff with the type of work under the RFQ;
- c. Professional and education qualifications of assigned staff;
- d. Workload, staff availability and accessibility; and

- e. Results of reference checks.

2. Ability to Meet the City's Requirements

- a. Responsiveness to the City's requirements in the RFQ; and
- b. Potential conflicts of interest or pending litigation that would affect the Firm's capacity to undertake the work described in the RFQ.

3. Technical Competence

- a. Knowledge and understanding of laws regarding public meetings and records; and
- b. Analytical, technical and written and oral communication skills.

4. Oral Interviews (if held)

If interviews are held, before the interview questioning begins, a Firm may make a presentation of not more than fifteen (15) minutes including, but not limited to the following topics:

- a. Knowledge and understanding of the assignment; and
- b. Understanding of the unique nature of the BA Urban Area and the Approval Authority.

5. Fee proposal

- a. Reasonableness of proposed fees for attorneys and non-attorney staff; and
- b. Rates for costs and out of pocket expenses incurred in performing services.

The City will review written responses submitted to determine if Firms are qualified to provide services as described in the RFQ. Once firms are qualified for the Pool, the City will select one or more Firm to serve as counsel for the Approval Authority. Final selection of a Firm for a contract requires ratification by the Approval Authority. Inclusion of a Firm in the Pool does not guarantee any engagement of such Firm for future legal work and the City retains the right to terminate the Pool at any time.

IV. Pre-proposal conference and Contract award

A. Pre-Proposal Conference

Firms are encouraged to attend a pre-proposal conference on **September 15, 2011**, at **10:00 A.M.** to be held at **UASI Executive Office, 10 Lombard St. Suite 410, San Francisco, CA 94111**. All questions will be addressed at this conference and any available new information will be provided at that time. If you have further questions regarding the RFQ, please contact the individual designated in Section VI.B.

B. Contract Award

Once the City has selected one or more Firms from the Pool for a particular engagement, the Department of Emergency Management (DEM), through the UASI Management Team, will recommend the Firm(s) to the Approval Authority for contracting, for ratification of the selection by the Approval Authority. Once ratified by the Approval Authority, **DEM/UASI** staff shall commence contract negotiations. If a satisfactory contract, including fees, cannot be negotiated in a reasonable time, the DEM may, in its sole discretion, terminate negotiations with the Firm and begin contract negotiations any other Firm in the Pool, or commence another selection process that is in the best interests of the City and Approval Authority. Negotiations are conducted between the City and each individual Firm. The result of negotiations with one Firm has no effect on any other Firm selected for an engagement. Satisfactory contract negotiations include Firm compliance with City contracting requirements as specified in this RFQ, as such requirements may be amended from time to time.

5. Terms and Conditions for Receipt of Submissions

A. Errors and Omissions in RFQ

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

B. Inquiries Regarding RFQ

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

Jada Winfrey

VIA E-MAIL ONLY

Jada.jackson@sfgov.org

C. Objections to RFQ Terms

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

D. Change Notices

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

E. Term of Submission

Submission of a submission signifies that the Firm's qualifications, services and prices are valid for 120 calendar days from the due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

F. Revision of Submission

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

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

At any time during the evaluation process, the City may require a Firm to provide oral or written clarification of its submission. The City reserves the right to establish a Pool without further clarifications of submissions received.

G. Errors and Omissions in Submission

Failure by the City to object to an error, omission, or deviation in the submission will in no way modify the RFQ or excuse the Firm from full compliance with the specifications of the RFQ or any contract awarded to the Firm.

H. Financial Responsibility

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

I. Firm's Obligations under the Campaign Reform Ordinance

Firms 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:

- i. 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.
- ii. 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.
- iii. 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, Firms should contact the San Francisco Ethics Commission at (415) 581-2300.

J. Sunshine Ordinance

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

K. Public Access to Meetings and Records

If a Firm 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 Firm must comply with Chapter 12L. The Firm must include in its submission (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 Firm'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 Firm 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 submission and/or termination of any subsequent agreement reached on the basis of the submission.

L. Reservations of Rights by the City

The issuance of this RFQ 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:

- i. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
- ii. Reject any or all submissions;
- iii. Reissue a Request for Qualifications or a Request for Proposals;
- iv. Prior to submission deadline for submissions, 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 RFQ, or the requirements for contents or format of the submissions;

- v. Procure any materials, equipment or services specified in this RFQ by any other means; or
- vi. Determine that no project will be pursued.

M. No Waiver

No waiver by the City of any provision of this RFQ 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 RFQ.

6. Contract Requirements

A. Standard Contract Provisions

The Firm(s) selected from the Pool will be required to enter into a contract substantially in the form of the Agreement for Professional Services, attached hereto as Appendix C. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy 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 from the Pool and may proceed against the original selectee for damages.

Firms are urged to pay special attention to the requirements of Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits, (§34 in the Agreement); the Minimum Compensation Ordinance (§43 in the Agreement); the Health Care Accountability Ordinance (§44 in the Agreement); the First Source Hiring Program (§45 in the Agreement); and applicable conflict of interest laws (§ 23 in the Agreement), as set forth in paragraphs B, C, D, E and F below.

B. Nondiscrimination in Contracts and Benefits

The selected Firm 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.

C. Minimum Compensation Ordinance (MCO)

The selected Firm 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 of the Agreement.

For the amount of hourly gross compensation currently required under the MCO, see 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.

D. Health Care Accountability Ordinance (HCAO)

The selected Firm 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.

E. 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.

Firms 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 and from the First Source Hiring Administrator, (415) 401-4960.

F. Conflicts of Interest

The selected Firm 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 Firm 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 selected Firm 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.

7. Protest Procedures

A. 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 submission 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 RFQ provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

B. Protest of Establishment of Pool or Contract Award

Within five working days of the City's issuance of a notice of intent to establish a Pool, any Firm that has submitted a responsive proposal and believes that the City has incorrectly omitted the Firm from inclusion in the Pool may submit a written notice of protest. In addition, within five (5) working days of the City's notification of Firms as to the final selection of counsel for the Approval Authority, any Firm in the Pool that believes that the City has improperly selected another Firm 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 establish Pool or award a contract to a Firm for work as counsel to the Approval Authority.

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 RFQ provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

C. Delivery of Protests

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

Jada Winfrey, Administrative Manager
Bay Area UASI
10 Lombard Street, Suite 410
San Francisco, CA 94111

Appendix B

Standard Forms

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

Before the City can award any contract to a contractor, that contractor must file 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) 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.

If a contractor would like to apply to be certified as a local business enterprise, it must submit item 4. To find out about item 4 and certification, the contractor should call Human Rights Commission at (415) 252-2500.

Item	Form name and Internet location	Form	Description	Return the form to; For more info
1.	Request for Taxpayer Identification Number and Certification http://www.sfgov.org/site/oca_page.asp?id=26550 www.irs.gov/pub/irs-fill/fw9.pdf	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 http://www.sfgov.org/site/oca_page.asp?id=26550	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.	S.F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in	HRC-12B-101	Contractors tell the City if their personnel policies meet the City's requirements for nondiscrimination against	Human Rights Comm. 25 Van Ness, #800 San Francisco,

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Item	Form name and Internet location	Form	Description	Return the form to; For more info
	Contracts and Benefits http://www.sfgov.org/site/sfhumanrights_index.asp?id=4584 In Vendor Profile Application		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. Contract-by-Contract Compliance status vendors must fill out an additional form for each contract.	CA 94102-6059 (415) 252-2500
4.	HRC LBE Certification Application http://www.sfgov.org/site/sfhumanrights_page.asp?id=45141 In Vendor Profile Application		Local businesses complete this form to be certified by HRC as LBEs. Certified LBEs receive a bid discount pursuant to Chapter 14B when bidding on City contracts. To receive the bid discount, you must be certified by HRC by the proposal due date.	Human Rights Comm. 25 Van Ness, #800 San Francisco, CA 94102-6059 (415) 252-2500

Where the forms are on the Internet

Office of Contract Administration

Homepage: www.sfgov.org/oca/
 Purchasing forms: Click on “Required Vendor Forms” under the “Information for Vendors and Contractors” banner.

Human Rights Commission

HRC’s homepage: www.sfhrc.org
 Equal Benefits forms: Click on “Forms” under the “Equal Benefits” banner near the bottom.
 LBE certification form: Click on “Forms” under the “LBE” banner near the bottom

Appendix C
Sample Contract

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

**Agreement between the City and County of San Francisco and
[insert name of contractor]**

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

Recitals

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

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

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number **[insert PSC number]** on **[insert date of Civil Service Commission action]**;

Now, THEREFORE, the parties agree as follows:

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

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

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

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

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

5. **Compensation.** Compensation shall be made in monthly payments on or before the [insert day] day of each month for work, as set forth in Section 4 of this Agreement, that the [insert title of department head], in his or her sole discretion, concludes has been performed as of the [insert day] day of the immediately preceding month. In no event shall the amount of this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies 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.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

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. **Payment; Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. **Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for 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:

i. 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;

ii. 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.

iii. 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.

iv. 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:

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

ii. 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

iii. 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.

iv. Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

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

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

ii. 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.

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

16. **Indemnification.** Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of

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

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

18. **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. **Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of [**insert whole dollar amount in words and numbers -- no pennies and no ".00"**] per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by Purchasing.

20. **Default; Remedies**

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

i. 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 |

ii. 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.

iii. 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.

iv. 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

RFP for Legal Services for the Urban Areas Security Initiative Approval Authority Board

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:

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

ii. Not placing any further orders or subcontracts for materials, services, equipment or other items.

iii. Terminating all existing orders and subcontracts.

iv. 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.

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

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

vii. 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:

i. 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.

ii. 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.

iii. 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.

iv. 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:

To Contractor:

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. Local Business Enterprise Utilization; Liquidated Damages

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

b. Compliance and Enforcement

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

ii. **Subcontracting Goals.** The LBE subcontracting participation goal for this contract is **[insert number]** %. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor. Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

iii. Subcontract Language Requirements. Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors. Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction. Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

iv. Payment of Subcontractors. Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount. Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

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. 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. 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:

i. 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.

ii. 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.

iii. 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.

iv. 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.

v. 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.

vi. Set the term of the requirements.

vii. Set appropriate enforcement and sanctioning standards consistent with this Chapter.

viii. 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.

ix. 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:

i. To be liable to the City for liquidated damages as provided in this section;

ii. 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;

iii. 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.

iv. 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;

v. 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:

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

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.

vi. 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. **[If the contract amount is \$50,000 or more, then add the following sentence:]** Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

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

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

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

52. **Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48, "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. (Supervision of Minors)**

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

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

58. **Graffiti Removal.** Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City’s property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor’s (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term “graffiti” means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner’s authorized agent, and which is visible from the public right-of-way. “Graffiti” shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code

Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

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

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

60. Slavery Era Disclosure

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

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

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

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. Dispute Resolution Procedure. A Dispute Resolution Procedure is attached under the Appendix [enter the appendix letter] to address issues that have not been resolved administratively by other departmental remedies.

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

CITY

CONTRACTOR

Recommended by:

[company name]

[name]
[title]
[department]

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:

Dennis J. Herrera
City Attorney

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.

By: _____
[name of Deputy City Attorney]
Deputy City Attorney

Approved:

Naomi Kelly
Director of the Office of Contract
Administration, and
Purchaser

[name of authorized representative]
[title]
[optional: address]
[optional: city, state, ZIP]

City vendor number: **[vendor number]**

Appendices

A: Services to be provided by Contractor

B: Calculation of Charges

➔ **If you obtained an insurance waiver from the Risk Manager, then list Appendix C here.**

C: Insurance Waiver

➔ **In the footer, the page number should match the “of” number, such as “27 of 27.”**

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

➔**List, as applicable:**

Personnel or Hourly Rate

Flat rate for specified period (e.g., monthly)

Rate for use of Contractor's equipment, if applicable

Rates for faxes (sending only), mileage, etc.

Actual costs for contractor meals, accommodations, long distance and cellular phone charges, postage, vehicle rental, etc., subject to the approval of City.

Any other applicable rates or charges under the Agreement.

Appendix C

U.S. DEPARTMENT OF HOMELAND SECURITY'S URBAN AREAS SECURITY INITIATIVE GRANT PROGRAM REQUIREMENTS FOR PROCUREMENT CONTRACTS

A. DEFINITIONS

“Agreement” means the agreement between City and Contractor to which this document (U.S. Department of Homeland Security's Urban Areas Security Initiative Grant Program Requirements for Procurement Contracts) is attached and incorporated or for which Contractor has submitted a bid or proposal.

“City” means the City and County of San Francisco.

“Contractor” means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from Homeland Security.

“Homeland Security Directive” includes any Homeland Security circular, notice, order or guidance providing information about Homeland Security programs, application processing procedures, and Project management guidelines.

“Government” means the United States of America and any executive department or agency thereof.

“Homeland Security” means the United States Department of Homeland Security or its Office of Domestic Preparedness.

“Third Party Subcontract” means a subcontract at any tier entered into by Contractor or a subcontractor, financed in whole or in part with Federal assistance originally derived from Homeland Security.

“UASI Program Guidelines” means the applicable Homeland Security's *Urban Areas Security Initiative Grant Program, Program Guidelines and Application Kit and the California Supplemental Guidelines*.

B. FEDERAL CHANGES

Contractor shall at all times comply with all applicable regulations, policies, procedures and Homeland Security Directives, including without limitation those listed directly or by reference in the Master Agreement between the City and Homeland Security or in the UASI Program Guide, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this Agreement.

Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

C. ACCESS TO RECORDS

Contractor agrees to provide the City, Homeland Security, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date City makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, Homeland Security, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 28 C.F.R. §§ 66.36(i), 70.53.

Contractor agrees to include paragraphs A, B, and C above in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

D. DEBARMENT AND SUSPENSION

Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." Contractor agrees that neither Contractor nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party subcontractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549. 28 C.F.R. § 66.35; 28 C.F.R. Part 67.

Contractor agrees to the provisions of Attachment 1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Attachment 1, Contractor is the "prospective lower tier participant."

The Contractor agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.

E. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Government, the Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

F. CONTRACT WORK HOURS AND SAFETY STANDARDS (*applicable to non-construction contracts in excess of \$2,500 that employ laborers or mechanics; 28 C.F.R. § 66.36(i)(6)*)

Compliance: Contractor agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327-330) as amended and as supplemented by Department of Labor regulations (29 C.F.R. Part 5), which are incorporated herein.

Overtime: No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause in Paragraph B of this section, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph B of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph B of this section.

Withholding for unpaid wages and liquidated damages - City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph C of this section.

Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

G. NOTICE OF REPORTING REQUIREMENTS

Contractor acknowledges that it has read and understands the reporting requirements of Homeland Security stated in 28 C.F.R. §§ 66.40 et seq., 70.50-70.52 and Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs *Financial Guide*, and agrees to comply with any such applicable requirements.

Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

H. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

Contractor agrees that Homeland Security shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

(1) The copyright in any work developed with the assistance of funds provided under this Agreement;

(2) Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement. 28 C.F.R. §§ 66.34, 66.36(i)(8)-(9).

Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

I. PATENT RIGHTS (*applicable to contracts for experimental, research, or development projects financed by Homeland Security. 28 C.F.R. §§ 66.36(i)(8), 70.48(e), Part 70, Appendix A.*)

General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the Homeland Security.

Unless the Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through Homeland Security, those rights in that invention due the Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

Contractor also agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by Homeland Security.

J. ENERGY CONSERVATION REQUIREMENTS

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. 28 C.F.R. § 66.36(i)(13).

Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

K. CLEAN WATER REQUIREMENTS (*applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.*)

Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that

the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

Contractor also agrees to include these requirements in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by Homeland Security. 28 C.F.R. § 66.36(i)(12).

L. CLEAN AIR (*applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.*)

Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to Homeland Security and the appropriate EPA Regional Office.

Contractor also agrees to include these requirements in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by Homeland Security.

M. TERMINATION FOR CONVENIENCE OF CITY (*All contracts in excess of \$10,000. 28 C.F.R. § 66.37*)

See the terms and conditions of the Agreement TERMINATION FOR DEFAULT

Contractor's failure to perform or observe any term, covenant or condition of this document (U.S. Department of Homeland Security's Urban Areas Security Initiative Grant Program Requirements for Procurement Contracts) shall constitute an event of default under this Agreement.

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

RFP for Legal Services for the Urban Areas Security Initiative Approval Authority Board

- (1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of the Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 59, or 61.
- (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.

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. 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.

N. LOBBYING

Contractor shall not use or pay any funds received under this Agreement to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Contractor agrees to the provisions of Attachment 2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

Contractor agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

O. INCORPORATION OF HOMELAND SECURITY TERMS

The preceding provisions include, in part, certain standard terms and conditions required by Homeland Security, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by Homeland Security, as set forth in 28 C.F.R. Parts 66 and 70 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all Homeland Security mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests that would cause City to be in violation of the Homeland Security terms and conditions.

**Appendix C
Attachment 1**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

Instruction for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that is certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion – Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

V. _____
Contractor Signature

Date

**Appendix C
Attachment 2**

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

VI. _____
Contractor Signature

Date