



**City and County of San Francisco  
Department of Public Works  
Infrastructure Division**



**REQUEST FOR QUALIFICATIONS**

**FOR**

**AS-NEEDED MECHANICAL/ELECTRICAL  
ENGINEERING SERVICES 2012**

**CONTRACT NO. APE12104**

**August 8, 2012**

This RFQ Package is available at no charge. Qualification Proposals must include the title:  
"AS-NEEDED MECHANICAL/ELECTRICAL ENGINEERING SERVICES 2012"



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**WEBSITES AND CONTACT INFORMATION**

Website or Email Address	For	Contact No.	Comments
<a href="http://mission.sfgov.org/OCABidPublication/">http://mission.sfgov.org/OCABidPublication/</a> (Click on category Architects and Engineers)	OCA website	-	RFQ online Announcements
<a href="http://bsm.sfdpw.org/contractadmin">http://bsm.sfdpw.org/contractadmin</a> (First time users must sign up to log in)	DPW website	-	Download RFQ Package
<a href="mailto:severino.caranto@sfdpw.org">severino.caranto@sfdpw.org</a>	Severino (Jun) Caranto	(T) 415-558-4595	Contract Manager
<a href="mailto:Selormey.Dzikunu@sfdpw.org">Selormey.Dzikunu@sfdpw.org</a>	Selormey Dzikunu	(T) 415-558-4059	Contract Monitoring Division (CMD) - Contract Compliance Officer
<a href="mailto:ContractAdmin.Staff@sfdpw.org">ContractAdmin.Staff@sfdpw.org</a>	Contract Administration	(T) 415-554-6229	Advertisement for LBEs
<a href="mailto:Elizabeth.Fitzgerald@sfgov.org">Elizabeth.Fitzgerald@sfgov.org</a>	Elizabeth Fitzgerald	(T) 415-554-6278 (F) 415-554-6168	Risk Management Program
<a href="http://www.sfhrc.org">www.sfhrc.org</a>	HRC	(T) 415-252-2500	HRC Directories and Forms
<a href="http://www.dir.ca.gov/DLSR/pwd/">www.dir.ca.gov/DLSR/pwd/</a>	Department of Industrial Relations	---	Minimum Wage Rates
<a href="http://www.sfgov.org/site/treasurer_page.asp?id=14973">www.sfgov.org/site/treasurer_page.asp?id=14973</a>	Office of the Treasurer & Tax Collector	(T) 415-554-4400	Business Tax Certificate
<a href="http://www.sfgov.org/olse">www.sfgov.org/olse</a>	OLSE	---	MCO and HCAO
<a href="mailto:Erik.Ward@sfgov.org">Erik.Ward@sfgov.org</a>	Erik Ward	(T) 415-581-2352	First Source Hiring Program

Abbreviations:

OCA – Office of Contract Administration  
 DPW – Department of Public Works  
 HRC – Human Rights Commission  
 OLSE – Office of Labor Standards Enforcement  
 MCO – Minimum Compensation Ordinance  
 HCAO – Health Care Accountability Ordinance  
 (T) - Telephone  
 (F) - Fax

## ANNOUNCEMENT

The San Francisco Department of Public Works (DPW) seeks qualifications for As-Needed Mechanical/Electrical Engineering services.

Proposals will be received at 30 Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, California 94102 until 2:30 P.M., **September 12, 2012**. Consultants shall submit proposals as required in Section 6.0 of the RFQ package. Late submittals will not be considered. Digital files of the RFQ Package may be downloaded at no cost at <http://bsm.sfdpw.org/contractadmin>. A copy of this announcement and any changes by addendum will be posted on the above website and the Bids and Contracts page at the City's website address: <http://mission.sfgov.org/OCABidPublication/> (Architects and Engineers, and Consultants and Professional Services categories)

DPW intends to award up to three master contracts, each having up to 5 years and \$1,500,000 contract limits. As-Needed Mechanical/Electrical Engineering Services include preparing plans, specifications, and cost estimates; performing surge analysis, constructability analysis, condition assessment reports, field investigations, third-party Quality Assurance/Quality Control (QA/QC) peer reviews, value engineering, power system reliability studies, construction support, peer review validation, and other consultation work. The services may generally be related but not limited to new construction, retrofit of existing structures, and other facility improvements projects.

Rating bonuses will be applied as per San Francisco Administrative Code Chapter 14B. Certified Local Business Enterprise (LBE) firms are encouraged to submit proposals. The LBE Subconsultant participation goal is **23%**. Call Selormey Dzikunu at 415-558-4059 for details. In accordance with Chapter 14B requirements, all Proposers, except those who meet the exception noted below, shall submit documented good faith efforts with their proposals and must achieve 80 out of 100 points to be deemed responsive. Proposers will receive 15 points for attending the pre-proposal conference. Refer to HRC Form 2B for more details. Exception: Proposers who demonstrate that their total LBE participation exceeds the above subcontracting goal by 35% will not be required to meet the good faith efforts requirements.

A pre-proposal meeting will be held **August 22, 2012** at 1:30 P.M. at 30 Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, California.

Questions regarding the RFQ must be submitted no later than 4:00 P.M., **August 31, 2012**, by email to the Contract Manager, Severino (Jun) Caranto, at: [severino.caranto@sfdpw.org](mailto:severino.caranto@sfdpw.org)

In accordance with San Francisco Administrative Code Chapter 6, no proposal is accepted and no contract in excess of \$400,000 is awarded by the City and County of San Francisco until such time as (a) the Mayor or the Mayor's designee approves the contract for award and (b) the Director of Public Works then issues an order of award. Pursuant to Charter Section 3.105, all contract awards are subject to certification by the Controller as to the availability of funds.

## **SECTION 1.0 – INTRODUCTION**

The Infrastructure Design and Construction Division of DPW will award As-Needed Mechanical/Electrical Engineering Services Contracts for various services. This Request for Qualifications (RFQ) seeks qualified firms, hereinafter referred to as "Consultants," to provide as-needed (on-call) Mechanical/Electrical Engineering services on a timely basis.

On an as-needed basis, the Consultant, including its team of subconsultants, will be required to support the efforts of City staff in preparing plans, specifications, and cost estimates; perform field investigations and constructability analysis; write reports on condition assessments; provide drafting and project scheduling services, value engineering and peer review consultation, Quality Assurance/Quality Control (QA/QC) review, and recommendations for various types of work. The mechanical engineering tasks may include planning, design, and construction of sewage treatment plants, pump stations, water treatment plants, compressed natural gas (CNG) filling systems, and related facilities; heating, ventilation, and air conditioning (HVAC) systems; plumbing systems, emergency generators systems, auxiliary water supply systems (AWSS), surge analysis for pumping stations, and other related mechanical engineering services.

The electrical engineering tasks may include electrical power distribution and lighting system design for both commercial and industrial type facilities that may involve low and medium voltage systems; design involving water and wastewater plant process improvements, power system coordination/reliability studies, process instrumentation and control system (I&C) design, and other electrical engineering consultations.

Selection will occur based on screening and evaluation of written proposals. The most qualified respondents will be invited for oral interviews, from which 3 firms will be selected and each awarded a 5-year contract (Master Agreement) to provide services on an as-needed basis. The maximum amount of each Master Agreement will not exceed \$1,500,000.

Since this is an "As-Needed" contract, award of a Master Agreement does not guarantee that the selected firms will perform all or any portion of the services described in this RFQ, nor does it guarantee that the maximum amount of \$1,500,000 will be expended. The maximum contract dollar amount does not represent a guaranteed revenue source for any of the selected firms.

## **SECTION 2.0 – BACKGROUND**

The Infrastructure Design and Construction (IDC) Division of DPW provides planning, design, and consulting services to City Departments and assists in the management of City streets, buildings, bridges, recreational facilities, and other City infrastructures. IDC applies engineering analysis to optimize the use of capital and maintenance funding. IDC is responsible for assuring that projects adhere to applicable codes and standards, and that projects are completed on schedule and within budget.

Within the IDC Division, the Mechanical/Electrical Engineering Section provides design and consultation services related to Mechanical and Electrical engineering needs of the City. Clients include different City agencies such as the SFPUC, SFMTA, Zoo, Library, Real Estate, School District, SFGH, and Recreation and Park Departments.

### SECTION 3.0 – TENTATIVE RFQ SCHEDULE

Availability and Advertisement of RFQ.....	<b>August 8, 2012</b>
Pre-Proposal Conference.....	<b>1:30 P.M., August 22, 2012</b>
Final Date to Submit RFQ Questions.....	<b>4:00 P.M., August 31, 2012</b>
Receive Proposals.....	<b>2:30 P.M., September 12, 2012</b>
Proposals Evaluation Period.....	<b>week of September 17, 2012</b>
Notify Candidates for Oral Interviews (if necessary).....	<b>week of September 24, 2012</b>
Oral Interviews (if necessary).....	<b>week of October 1, 2012</b>
Start Award Process.....	<b>TBD</b>

### SECTION 4.0 – SCOPE OF SERVICES

- A. The Consultant, with its team of subconsultants, shall provide services for the following Mechanical/Electrical Engineering related work. The services will include, but not be limited to, preparation of:
1. Electrical Engineering. The Consultant shall provide services for the following Electrical Engineering related work:
    - a. Electrical power distribution and interior lighting design for commercial type buildings.
    - b. Building fire alarm and security systems, including video surveillance systems and networks
    - c. Water and wastewater plant process improvements.
    - d. Electrical Power System Design for Water and Wastewater Facilities including low and Medium Voltage Power Distribution and Motor Controls.
    - e. Water and Wastewater Facility As-Built Verification and Production of Record Drawing.
    - f. Power system short circuit analysis and coordination studies including system reliability.
    - g. Instrumentation and control (I&C) system design including in-plant/remote wireless communication and controls and modification of existing DCS/SCADA, systems.
    - h. Energy efficiency studies including energy audits.
    - i. Field startup and commissioning of water and wastewater facilities.
  2. Mechanical Engineering. The Consultant shall provide services for the following Mechanical Engineering related work:
    - a. Design of sewage treatment plants, pump stations, water treatment plants, compressed natural gas (CNG) filling systems, and related facilities.

- b. Design of heating, ventilation, and air conditioning (HVAC) systems; plumbing systems, emergency generators systems, and auxiliary water supply systems (AWSS).
  - c. Surge analysis for pumping stations.
3. Construction Support: Consulting services and field visits may extend into the construction phase of a project including responding to RFIs and design changes.
4. Cost Estimating: Consultant may be asked to provide cost estimates for various types of projects.
5. Quality Control/Quality Assurance (QA/QC) Review: This type of work may require Consultant to provide QA/QC reviews of construction documents of certain City projects. The goal of the review is to ensure that projects under design by the City or other Consultants adhere to industry standards and applicable codes. Consultants will be required to provide written comments and recommendations as deliverables under this work.
- B. The Consultant may be required to make presentations to the Board of Supervisors and various City Commissions, DPW Clients, and at neighborhood/community meetings. All work shall be done in conformance with DPW procedures, guidelines, and directions.
- C. Distribution of Workload

Table 1 below provides an anticipated workload distribution of the tasks described under Section 4.0. This information is provided for the purpose of determining LBE Subconsultant participation.

Table 1

<i>Workload Description</i>	<i>Percentage Distribution</i>
Mechanical Engineering Design	40%
Electrical Engineering Design	30%
Reports, Investigations, and Presentations	10%
Drafting	8%
Construction Support	5%
Cost Estimating	5%
Quality Control / Quality Assurance Review	2%
<b>Total</b>	<b>100%</b>

## SECTION 5.0 – TECHNICAL QUALIFICATIONS

### A. Prime Consultant and Joint Venture (JV) Partners Qualifications

- 1. Any Joint Venture (JV) responding to this RFQ must clearly identify the lead Consultant (referred to hereafter as the Lead JV Partner). Additional administrative responsibilities and duties may be required of the Lead JV Partner.



2. The Prime Consultant or JV Partners must either individually, or collectively, demonstrate relevant expertise to successfully perform their role and responsibilities in the scope of services described in the RFQ.
3. To qualify as a Prime Consultant or JV Partner for this RFQ, a Consultant must possess a minimum of ten (10) years experience that demonstrates the capability to provide professional Mechanical/Electrical Engineering services, or the Consultant must have been in business for a minimum of one year providing professional Mechanical/Electrical engineering services AND have an owner, partner or principal responsible for making significant administrative and business decisions on behalf of the firm with a minimum of 10 years experience in providing professional Mechanical or Electrical engineering services."
4. Professional Engineers assigned to work must maintain current California registration.

B. Subconsultant Qualifications

1. To qualify as a Subconsultant that will provide technical services described in this RFQ, the Subconsultant(s) must possess a minimum of five (5) years experience in one or more technical fields required under the scope of services, or have been in business for a minimum of one (1) year providing services in the technical field(s) required under the scope of services for which the Subconsultant is being proposed AND have an owner, partner or principal responsible for making significant administrative and business decisions on behalf of the firm with a minimum of five (5) years experience in the technical field(s) required under the scope of services for which the Subconsultant is being proposed.
2. Professional Engineers assigned to work in this contract must maintain current California registration.
3. Non-technical Subconsultants, such as drilling, traffic control, and laboratory firms, are not required to meet the above Subconsultant qualifications.
4. The Prime Consultant may include non-technical subconsultants, such as, drilling, traffic control, and laboratory firms, in its list of team members, and on the HRC Form 2A.

C. Key/Lead Personnel Qualifications

1. To qualify as a Lead Mechanical or Electrical Engineer for performing the services under this RFQ, an individual must possess the following:
  - a. A minimum of five (5) years of experience performing Mechanical or Electrical engineering work.
  - b. Current registration as a licensed Mechanical or Electrical Engineer in the State of California.
  - c. Knowledge of current local, State, and Federal regulations governing design, construction, contracting, environmental, and safety measures.
  - d. Experience in at least three (3) relevant, verifiable projects.
  - e. Experience in LID and LEED or other alternative design concept.

## SECTION 6.0 – SUBMITTAL REQUIREMENTS

- A. Consultant shall submit the required copies of their Proposals to the Contract Manager at the following address before the date and time submittals are required as specified in the Announcement for this RFQ. Refer to paragraph C below for submittal requirements. Late Proposals or partial packages will not be accepted. All 4 envelopes must be submitted by the specified deadline.
1. The time of the submittal deadline will be determined per United States Official Time (Pacific) website, accessed at [www.time.gov](http://www.time.gov). Postmarks will not qualify as delivery and Proposals submitted by fax or in electronic format will not be accepted.
  2. Submit proposals to:  
  
Department of Public Works  
Project Controls and Services  
30 Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94102  
Attn: Severino Caranto – Contract Manager
- B. Questions regarding this RFQ shall be submitted in writing via email to the Contract Manager by the deadline date specified in the Announcement for this RFQ.
- C. Proposals shall be submitted as follows:
1. Submit **seven (7) sets of bound Statement of Qualifications (SOQ)**. Refer to Section 7.0 of this RFQ for contents of the SOQ. The cover of the SOQ must include the title and number of this RFQ, and the name of the Consultant.
  2. Submit **one original and two copies of all required HRC forms**, including Good Faith Efforts Documentations (if any), separately in a sealed envelope. The sealed envelope shall be titled "HRC FORMS", and include the title and number of this RFQ, and the name of the Consultant. Refer to Appendix C.
  3. Submit **one original and one copy of all required Contract forms** separately in a **sealed** envelope. The sealed envelope shall be titled "CONTRACT FORMS", and include the title and number of this RFQ, and the name of the Consultant. Refer to Appendix D.
  4. Submit **digital copies** of items 1, 2, and 3 above as separate PDF files on one Compact Disc (CD).
  5. Submit **one original and one copy of the Fee Schedule** in a separate and sealed envelope. The sealed envelope shall be titled "FEE SCHEDULE", and include the title and number of this RFQ, and the name of the Consultant. Refer to Appendix B. Digital file of the Fee Schedule should not be included in the CD.
- D. Double-sided printing on recycled or recyclable white paper and 10-point font is encouraged.
- E. The City may disqualify any Proposal as non-responsive for the following reasons:

1. The RFQ submittal does not contain the information required as specified under Section 6.0.
2. The Proposal fails to meet the specified LBE goals and fails to submit documented good faith outreach as indicated in Section 9.0, Paragraph I below.
3. The Proposal does not contain the required HRC forms, Fee Schedule is missing, and Forms listed in the Appendices are incomplete.
4. Acceptance of the Proposal would violate applicable City and County of San Francisco Codes and Ordinances or other State or Federal laws.

## **SECTION 7.0 – CONTENTS OF RFQ SUBMITTAL**

A. **RFQ PROPOSAL:** The RFQ Proposal Submittal shall include the required information in the order specified below. (Note: Each face of a double-sided sheet is counted as one page)

1. **Cover Letter** (Limit to **3** Pages)

A letter summarizing the team's qualifications and approach for providing services, as it relates to key points of the RFQ response.

2. **Technical Qualifications** (Limit to **30** Pages)

Provide Technical Qualifications including the following information:

- a. The full name and address of the prime consultant, or each joint venture partner consultant (if the prime is a joint venture). Provide the name, phone numbers, and email addresses of two designated contact persons representing the prime consultant or each joint venture partner consultant. Describe services that the prime consultant or each joint venture partner consultant can provide which are relevant to this RFQ.
- b. The full name and address of all sub-consultants. Provide the name, phone number, and email address of one designated contact person representing each sub-consultant firm. Describe services that each sub-consultant can provide which are relevant to this RFQ.
- c. Provide all information necessary to substantiate compliance with the Qualifications specified in Section 5 of this RFQ. Provide information of relevant projects performed by the Prime Consultant or each of the joint venture partner consultant, subconsultant, and key/lead personnel, including the project name, location, size, use, date of completion (anticipated or actual) and construction cost (anticipated or actual). Provide a brief description of the project and owner(s). Include drawings or photos, if available, in the Appendix.
- d. Provide references for relevant projects listed in subparagraph A.2.c above. List of references shall include owner(s) or, if an owner is no longer reachable, another person who can verify the involvement of the subject firm on the relevant projects listed. Include the full name, title, firm, address, phone number, email address, and a brief description of involvement with the listed project of all references

- e. The City reserves the right to check any, all, or none of the references submitted.

**3. Team Qualification And Experience** (Limit to **40** Pages)

This section shall describe the candidate's team organization, management structure and processes, and additional experience. The following information shall be included in a format and arrangement determined by the candidate, in conformance with the page size limitations of this Section.

- a. Describe the roles and responsibilities of the prime consultant. If the prime is a joint venture, describe the roles and responsibilities of each joint venture partner. Describe how the workload might be organized, divided or assigned. Demonstrate that there are no overlaps or gaps in services.
- b. Describe the proposed team structure and the role of key sub-consultants. Indicate if this team or portions of the team have worked together before or if any sub-consultants have a track record of successful projects with the prime. Indicate whether firm/joint venture or sub-consultants have worked successfully in conjunction with staff of the City or any other government entity to deliver design services.
- c. Describe the team's project management, quality assurance / quality control, cost control, and change management policies, procedures, and applications.
- d. List the full name and discipline of key personnel who will be principally involved for a majority of their time in the as-needed contract. "Key personnel" is defined as anyone committed to the as-needed Contract at least 25% of the time on the firm's behalf. Include full name, firm name, discipline and proposed roles and responsibilities in the team. Describe the experience and qualifications of all key personnel listed. Resumes may be included in appendices.

**4. Overall Approach** (Limit to **20** Pages)

Provide descriptions of overall approach including the following:

- a. How will team conduct specific major tasks and prepare anticipated deliverables.
- b. Describe your Quality Assurance / Quality Control program.
- c. Describe your plan to ensure that the LBE Goal is met during the contract.
- d. Other ideas in managing as-needed services.

**5. Appendices** (No Page limit)

- a. Resumes
- b. Project drawings or photos, if applicable.

**B. HUMAN RIGHTS COMMISSION FORMS**

1. In a separate sealed envelope, submit the following Human Rights Commission forms:

- Form 2A - HRC Contract Participation
- Form 2B - HRC "Good Faith Outreach" Requirements Form and documentations.
- Form 3 - HRC Non-Discrimination Affidavit (signed by JV Lead Partner, if applicable)
- Form 4 - HRC Joint Venture Form (if applicable)

- Form 5 - HRC Employment Form
2. Fillable forms may be downloaded online from the HRC website: [www.sfhrc.org](http://www.sfhrc.org)  
(Download HRC Attachment 2)
  3. Questions regarding the Human Rights Commission program should be directed to the HRC Contract Compliance Officer listed at the "Website and Contact Information" section of this RFQ.

#### C. CONTRACT FORMS

1. Certification and declaration forms to be completed by the **Prime or Joint Venture Lead Partner** if applicable, except as noted (Refer to Appendix D):
  - Certification of Proposer Regarding Debarment and Suspension Form
  - Minimum Compensation Ordinance Declaration Form
  - Health Care Accountability Ordinance Declaration Form
  - Non-Construction First Source Employer's Projection of Entry Level Positions Form
  - Chapter 12B Compliance Certification Form (each JV firm must complete this form)
2. Certification and declaration forms to be completed by the **Subconsultant(s)**:
  - Certification of Subcontractor, Lower-Tier Subcontractor or Supplier Regarding Debarment and Suspension Form
  - Minimum Compensation Ordinance Declaration Form
  - Health Care Accountability Ordinance Declaration Form

#### D. FEE SCHEDULE

1. The Consultant(s) shall prepare a Fee Schedule for their services and their subconsultants using the guidelines as indicated in Appendix B. Submit an audited Company Financial Statement, if available, to support the Overhead Rate used.

### **SECTION 8.0 – SELECTION PROCESS**

By submitting a Proposal, the proposer hereby acknowledges and accepts the general terms and conditions specified in the Master Agreement. A sample Master Agreement, for reference only, is included in Appendix E. The selection process shall be as follows:

#### A. RFQ WRITTEN PROPOSAL EVALUATION

1. The Human Rights Commission will review the Proposals for compliance with its requirements. No firm will be recommended for further consideration without HRC approval. Firms that are deemed non-responsive will not be considered for ranking purposes.
2. A committee will review the RFQ submittals based on the Submittal Evaluation Form shown in Appendix A. No interviews will be held during this phase.

3. Based on the HRC recommendations, the written proposal scores of responsive firms will be tabulated with applicable rating bonuses and the top **5** ranked firms will be short-listed and invited for oral interviews. In its sole discretion, DPW reserves the right to change the number of firms to be short-listed depending on the number of proposers and/or the results of the written scores.
4. Notification will be sent to the firms that are short-listed, indicating the time and place of the interviews, documenting any change in Evaluation Criteria for the interviews, and requesting further information if needed.

#### B. ORAL INTERVIEW PROCESS

1. If only three or less firms are responsive, the City reserves the right to cancel the interview process and award the contracts to the responsive firms. In its sole discretion, DPW reserves the right to cancel the oral interview process, even if more than three firms are responsive, and award the contracts to the top three responsive firms based on the written proposal scores.
2. The same selection panel for the written proposal evaluation will interview the short-listed firms. The interview process consists of a presentation followed by question and answer portion, and may include follow up questions if clarification of a consultant's response is necessary. The presentation may include materials from the SOQ, discussion of qualifications and experience, and supporting arguments why the firm should be chosen for this contract. A separate period will be available to review the Questions before the actual presentation. The same set of interview questions will be used for all consultants. The selection panel will proceed to evaluate each consultant independently based on each of the consultant's presentation and responses to the selection panel's questions. Each question will be weighted according to its importance.
3. There are no limits to the number of participants in an interview, but it is recommended that only key individuals of each team should appear before the interview panel. A team member who is part of two or more Prime Consultant teams may join each Prime Consultant interview team if so desired.
4. The session will be divided roughly into two components, with approximately 20 minutes for a team presentation, to be followed by at least 15 minutes of question and answer portion. The final timing will be announced prior to the interview schedule. Overhead projection equipment may be available at the interview room, but Consultants must verify equipment availability with the Contract Manager prior to the interview day. Consultants must be ready to provide own presentation equipment or material in the event that the City equipment is not available. Powerpoint files, if used and provided to the Contract Manager for the presentation, will become the property of the City and may be used by the City in any way deemed appropriate.

C. FINAL SELECTION PROCESS

1. The submittal and interview scores will be combined as follows:

<u>Evaluation Phase</u>	<u>Max. Points</u>	<u>Weight</u>
Submittal or Written Proposal	100	65%
Oral Interview	100	35%
<u>Total</u>		<u>100%</u>

2. In the event that the oral interview process is canceled, then the final scores will be based only on the written submittal scores with 100% weight.
4. The Final Scores will be submitted to the Human Rights Commission for application of any appropriate rating bonuses. This action by the HRC will determine the final rankings, which will be issued by email notification to each firm.
5. After the final ranking, comments and observations regarding the selection process may be requested by contacting the Contract Manager.

D. CONTRACT NEGOTIATION AND AWARD

1. The City will negotiate 5-year Master Agreements with the 3 highest-ranking firms based on a City-determined scope of work and a fee schedule acceptable to the City. A copy of the City's sample standard agreement is included in Appendix E. If it is not possible to complete negotiations with the designated firm, or if within six weeks of the notice of final ranking, the designated firm does not fulfill all City requirements necessary to enter into a fully-executed contract, the City may elect to negotiate with the next highest ranked firm in descending order. The resulting Personal Services Contract will be held by the Department of Public Works and approved by the Civil Service and Human Rights Commission.
6. Refer to Appendix B, Fee Schedule, for negotiation guidelines of overhead, direct labor, and other direct charges.
7. In order to proceed with contract award, the following items are required, as applicable:
- Revised and negotiated Fee Schedules on Consultant Company Letterhead signed by the Principal.
  - 12B Compliance of Prime Consultant or Joint Venture partners.
  - Business Tax Certificates of the Prime Consultant, or Joint Venture partners if applicable, and Subconsultants.
  - City Vendor Identification numbers for the Prime Consultant, or Joint Venture entity.
  - Insurance of Prime Consultant, or Joint Venture entity.

**SECTION 9.0 – TERMS AND CONDITIONS FOR RECEIPT OF PROPOSALS**

A. Error and Omissions of RFQ

Proposers are responsible for reviewing all portions of this RFQ. Proposers are to promptly notify the Contract Manager, by email, upon discovery of any ambiguity, discrepancy,

omission, or other errors in the RFQ. Submit requests for clarification prior to the deadline for submittal of questions as specified in the Announcement. The City is not obligated to issue addenda in response to any request submitted after the deadline. Oral statements shall not be relied upon as legitimate responses and shall not be binding.

Any interpretation of, clarification, modification, or change in this RFQ will be made by written addendum and shall become part of the RFQ and any contract awarded. The City shall be bound only by the written terms of this RFQ and any addenda hereto. The City will not be responsible for any other explanation or interpretation.

B. Inquiries Regarding RFQ

Inquiries regarding the RFQ and all oral notifications of intent to request written modification or clarification of the RFQ must be directed to the Contract Manager. Refer to Announcement for questions submittal deadline.

C. Objections to RFQ Terms

If a Proposer objects on any grounds to any RFQ or legal requirement imposed by this RFQ, the Proposer shall not have more than ten (10) calendar days after this RFQ is advertised to provide written notice to the Department of Public Works setting forth with specificity the grounds for the objection. The failure of a Proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

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

D. Financial Responsibility

This RFQ is subject to fiscal provisions, contracting, and regulatory process of the City, and the terms and provisions of the City's Charter and Administrative Code. Consultant's assumption of risk for possible non-appropriation is part of the consideration of this RFQ.

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.

The City is not obligated to award a contract (Master Agreement) under any circumstance, and specifically reserves the right to withdraw this RFQ, or modify any contract let pursuant to this RFQ, at no cost to the City.

E. Proposer's Obligations under the Campaign Reform Ordinance (CRO)

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

No persons 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 for such contract until (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 services, 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; and
- 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 Consultant approaches any City officer or employee with a particular contract. The negotiation period ends when a contract is awarded or not awarded to the Consultant. Examples of initial contacts include: (i) a vendor contracts a City officer or employee to promote himself or herself as a candidate for a contract; and (ii) a City officer or employee contacts a Consultant to propose that the Consultant apply for a contract. Inquires for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

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

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

For further information, proposers should contact the San Francisco Ethics Commission as indicated on Websites and Contact Information section.

#### F. Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), consultants' bids, responses to RFQs 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 organizations' net worth or other proprietary financial data submitted for qualification for a contract or other benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

#### G. Reservation of Rights by the City

1. 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:
  - a. Not to preclude any interested firms to propose;
  - b. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
  - c. Reject any or all proposals submitted;
  - d. Reissue a Request for Qualifications;
  - e. Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment, or services to be provided under this RFQ, or the requirements for proposal content;
  - f. Procure any materials, equipment or services specified in this RFQ by any other means in accordance with San Francisco Administrative Code Chapter 21 requirements; or
  - g. Determine that no project will be pursued.
2. The City reserves the unqualified right to postpone the selection of the Consultant for its own convenience, to withdraw this RFQ at any time without indicating any reason for such rejection, or to negotiate with any, all or none of the Consultants. The City reserves the right to remedy technical errors, clarify the published scope of services and approve or disapprove the use of the sub-consultants.
3. The City has the right to use any or all ideas or concepts presented in any proposal without restriction and without compensation to the Consultant. As a corollary, the City's selection of a Consultant does not constitute the City's acceptance of all particulars of the Consultant's proposal.
4. The City reserves the right to check any, all or none of the references submitted.
5. No person or firm responding to this RFQ shall obtain any claim or right of action against the City by reason of any aspect of the RFQ and defects or abnormalities in the selection process, the rejection of any proposal, the acceptance of any proposal, any statements, representations, acts of omissions of the City, the exercise of any City discretion set forth in or with respect to any of the foregoing, and any and all matters arising out of all or any of the foregoing.

#### H. Provision of Equal Benefits

1. Effective June 1, 1997, Chapter 12B of the San Francisco Administrative Code was amended to prohibit 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 domestic partners and spouses of employees. All proposing firms must be certified by the San Francisco Human Rights Commission (HRC) as being in compliance with Chapter 12B. The HRC has developed rules of procedure and various resource materials explaining the equal benefits program. The materials are available by contacting the HRC Equal Benefits Section as indicated on Websites and Contact Information section.

2. The Consultant shall be compliant and certified with the above Provisions before award of agreement. Consultants that are already 12B compliant and have no changes to the above provisions do not have to fill out the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101). All new Consultants, including new Joint Ventures, to the City, or those that have made changes to their company policies, and those that are not current with the 12B compliance status shall complete form HRC-12B-101. Refer to Appendix F for a copy of the form.
3. The completed form and supporting documents shall be sent to:

San Francisco Human Rights Commission  
Equal Benefits Compliance Officer  
25 Van Ness Ave, Suite 800  
San Francisco, California 94102  
Phone # (415) 252-2500  
Fax # (415) 431-5764

I. Human Rights Commission (HRC) Requirements

The requirements of the Local Business Enterprise Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance") shall apply to this RFQ.

To be eligible for award of this contract, each proposer must agree to comply with the following Local Business Enterprise (LBE) requirements authorized by San Francisco Administrative Code Chapter 12B, Section 12B.4, and Chapter 14B (where applicable), and their implementing Rules and Regulations

1. Local Business Enterprises (LBE) Goals

- a. The Subconsultant participation goal is **23% LBE**. Pursuant to Section 14.B.9 of the Administrative Code, proposers are hereby advised that the availability of Minority Business Enterprises (MBE), Women Business Enterprises (WBE), and Other Business Enterprises (OBE) to perform subconsultant work on these contracts is as follows: **13% MBE, 2% WBE, and 8% OBE**. (These are not goals, but are availability advisory only.) Proposers are further advised that they may not discriminate in the selection of subcontractors on the basis of race, gender, or any other basis prohibited by law, and that they shall undertake all required good faith outreach steps in such a manner as to ensure that neither MBEs nor WBEs nor OBEs are unfairly or arbitrarily excluded from the required outreach.

- (1) Proposers may download the HRC Attachment 2 Forms including HRC Form 2A, Consultant Participation Form, and HRC Form 2B, Good Faith Efforts Form from the following Website:

<http://www.sf-hrc.org/index.aspx?page=73>

- b. The HRC Attachment 2 is a part of the RFQ and is attached as Appendix C. HRC Certified LBE Proposers may be eligible for up to 10% rating bonus if certain requirements stated in the HRC Attachment 2, Part II, are met.

- c. The LBE Subconsultant participation goal stated above for this project is the percentage of the total value of the services to be procured. The goal must be met with LBE firms that are certified as LBE firms by the San Francisco Human Rights Commission. The HRC website provides a current list of all certified LBE firms. Other firms may be used to meet the subconsulting goal provided that all firms so used are certified as LBE firms by HRC as of the due date of this proposal. The HRC will review LBE participation for compliance when the billings have reached the following percentages of the contract amount: 30%, 50%, 70%, and 90%.

(1) For information concerning currently certified LBE firms to be utilized in meeting the LBE Subconsultant participation goal, please go to the following Website:

[http://mission.sfgov.org/hrc\\_certification/](http://mission.sfgov.org/hrc_certification/)

- d. All proposers must meet the subconsultant goal and meet the good faith outreach requirements. Any proposal that fails to meet the specified LBE participation goal and fails to meet the good faith outreach requirements shall be considered non-responsive and shall be rejected. Refer to HRC Form 2B for more details.
- e. Proposals that do not meet the LBE participation goal will be rejected as non-responsive unless the HRC Director finds that the proposer diligently undertook all the good faith efforts required by this ordinance and that the failure to meet the goal resulted from an excusable error. The contract awarding authority shall require proposers on the contracts to contact a LBE before listing that LBE as a subconsultant in the proposal. A proposal that fails to comply with this requirement will be rejected as non-responsive.
- f. All proposers shall undertake good faith outreach as set forth in Section 14.B.8C of the ordinance to select subconsultants to meet the LBE goal. The Good Faith Outreach form with the required supporting documentation must be completed and submitted with the proposal even if the LBE subconsultant goal has been met.
- g. Proposers must identify on HRC Form 2A the particular LBE subconsultants and lower tier subconsultants to be utilized in performing the contract, specifying for each the percentage of participation, the type of work to be performed and such information as the HRC reasonably requires to determine the responsiveness of the proposal.
- h. The LBE proposer is also required to comply with the established goal of the RFQ. The LBE proposer, proposing as a joint venture with a non-LBE firm is also required to comply with the established goal. The prime association partner must be of the same or similar discipline in order to be eligible for a rating bonus.
- i. The Human Rights Commission recognizes that consultants at the time of award of as-needed contracts may not be able to predict accurately the disciplines required for services on a particular project. After contract award, the HRC may approve written requests by consultants to utilize HRC certified LBEs who are not listed in the consultant's proposal as sub-consultants to meet the LBE goal. A written request must be submitted and approved by the HRC and a written contract modification to the agreement must be executed prior to commencing such work. Failure to submit such requests in a timely manner will result in the work of the said sub-consultants not being counted toward meeting the LBE participation goals and not being authorized to perform under the Master Agreement.

- j. LBEs identified as sub-consultants must be certified with the San Francisco Human Rights Commission by the proposal due date, and must be contacted by the proposer (prime consultant) prior to listing them as sub-consultants in the proposal. Additionally, sub-consultants should not enter into any agreement that limits their ability to be listed or utilized by more than one proposer. Any proposal that does not meet the requirements of this paragraph will be non-responsive.
  - k. Proposals submitted in response to this RFQ that fail to comply with the material requirements of the S.F. Administrative Code Chapter 14B and the RFQ will be deemed non-responsive and will be rejected. During the term of the contract, any failure to comply with the level of LBE sub-consultant participation specified in the contract shall be deemed a material breach of contract. Sub-consulting goals can only be met with HRC certified LBEs located in San Francisco.
  - l. For questions concerning the HRC Forms, contact the HRC Contract Compliance Officer for the Department of Public Works, Infrastructure Division as indicated on Websites and Contact Information section of this RFQ. The forms will be reviewed and approved by HRC prior to the interview phase.
2. LBE (Small and/or Micro-LBE) Prime Proposers Rating Bonus

The City strongly encourages proposals from qualified LBEs. Pursuant to Chapter 14B, the following rating bonus will be in effect for the award of this project for any prime proposers who are certified by HRC as a LBE, or joint venture partners who are certified as a LBE by the proposal due date. Certification applications may be obtained by contacting HRC as indicated on the Websites and Contact Information section. The rating bonus applies at each phase of the selection process and will be added to the score of each firm eligible for a bonus for purposes of determining the highest ranked firm. Refer to HRC Attachment 2 for more details.

The application of the rating bonus is as follows:

- a. A 5% bonus to a joint venture prime proposer with a LBE participation that equals or exceeds 35%, but is under 40%; or
  - b. A 7.5% bonus to a joint venture prime proposer with a LBE participation that equals or exceeds 40%.
  - c. A 10% bonus to:
    - A LBE prime proposer; or
    - A joint venture among LBE prime proposers.
3. Prime and Joint Venture Partners
- a. A Joint Venture partner shall not submit a proposal as a partner in another Joint Venture team or as a separate Prime for this RFQ.
  - b. A Prime or Joint Venture partner can be a subconsultant to another team submitting a proposal for this RFQ.

## **SECTION 10.0 – CONTRACT REQUIREMENTS**

A. Insurance (Refer to Appendix E – Section 15 of the Sample Master Agreement)

B. Insurance Requirements

City departments requesting insurance from contractors have encountered problems obtaining acceptable policy endorsements and/or blanket policy language from the insurance brokers. In addition, departments have found that some policies are underwritten by companies that do not meet the City's minimum rating requirements. The resulting delays often affect the City's ability to complete the processing of contracts or hold up payments to contractors when insurance documents are unacceptable.

The following guidelines are intended to assist contractors, brokers, and agents in meeting the documentary requirements for insurance of City contracts. Contractors may assist in providing their insurance brokers, agents, and sureties with a copy of the insurance language that is incorporated into their contracts.

1. The City's minimum rating for acceptable insurance and surety companies is A-, VIII or higher. In addition, companies must be authorized to do business in the State of California and be satisfactory to the City. Insurance from companies that do not meet these minimum criteria, will be rejected and result in delay in the processing of a contractor's contract award or payments.
2. Written endorsements to policies must be certified by the insurance underwriter or insurance company. Endorsements must include the name of the insurance carrier and be issued on the company stationery. The insurance policy number, the name of the insured, the term of the policy, the endorsement language, and a signature of the authorized person from the insurance company issuing the endorsement must be included. The City will no longer accept any endorsements written and signed by the insurance brokers except in the following circumstances:
3. Insurance brokers may issue Blanket Endorsements as written by the insurance underwriters, but the entire Blanket Endorsement terms must be submitted to the City with the applicable sections of the endorsement to the policy individually identified. The Blanket Endorsement should include the name of the insurance carrier, the insurance policy number, the name of the insured, the term of the policy, and the signature of the broker. Any language outside of the blanket policy language shall require either the addition of blanket language or an endorsement signed by the underwriter for the insurance company.
4. If any insurance broker/agent is an Agent authorized to add and delete policy language and can act in the place of an insurance underwriter, the following is required:
  - A letter designating the agent or broker by name as a representative of the insurance company with authority to add, delete, or change the insurance company underwriting policy language. Such letter shall be on the insurance company letterhead and signed by an authorized representative of the insurance company and shall include the name of the insurance company, type of policy, policy number, name of the insured, and policy term. Such letter shall also state that the named Agent is authorized to add or delete policy coverage (endorsements) on behalf of the insurance company.

The City reserves the right to conduct a random audit on all certificates, policies, and endorsements.

C. Insurance and other Requirement for Associations/Joint Ventures/ Partnerships<sup>1</sup>

The Consultant operating under the auspices of associations, joint ventures, or partnerships shall provide the appropriate insurance coverage.

*(Excerpts from the City's Risk Manager's Insurance Manual)*

While two (2) or more venture participants may have their separate insurance programs for their usual operations outside of or before forming a joint venture, such separate coverage does not apply to joint venture operations. Consider the following language from a typical general liability policy:

"No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations."

Professional Liability policies often have similar language.

Not only is the joint venture or partnership not insured automatically under the separate insurance programs of the participants, but also the participants themselves are not even covered by their own policies with respect to their interests in the association, joint venture, or partnership.

While the City contract may use the term "association" instead of "joint venture" or "partnership", there is a concern insurers may construe the joint operation under one contract to be a joint venture, in fact, even if called by another name, resulting in voiding the coverage.

There are three (3) general methods of insuring associations, joint ventures, or partnerships:

1. Issue separate insurance policies with the Named Insured being the joint venture or partnership. This is the most cumbersome, expensive arrangement;
2. Have one of the participants include the joint venture or partnership as a Named Insured on all of the policies required of the Consultant in the City contract. This option is also cumbersome and expensive;
3. Have each participant include the joint venture or partnership as a Named Insured on each of their separate policies, but only with respect to the interests of that participant in the joint venture or partnership. It is the City's understanding that this should not be a costly process.

The intent of these methods is that the association, joint venture or partnership, is a Named Insured on all the required policies and is insured only once. Generally, the types of insurance affected by associations, joint ventures, or partnership are the Commercial General Liability and Professional Liability policies; however, the City will refer insurance

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<sup>1</sup> Under California Contract Law, an association is given the same standing as Joint Ventures or Partnerships.

matters to its Risk Manager when insurance coverage or language in the policies is being disputed between parties.

For questions concerning insurance matters, contact Elizabeth Fitzgerald, the Department of Administrative Services, Risk Management Program as indicated on Websites and Contact Information section.

D. Indemnification (Refer to Appendix E – Section 16 of the Sample Master Agreement)

E. Conflict of Interest

1. The successful proposer will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The successful proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.
2. No officer, member or employee of the City and no member of their governing bodies will have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. No Consultant, nor member of the Consultant's family shall serve on the City board, committee, or hold any such position which either by rule, practice or action nominates, recommends, supervises Consultant's operations or authorizes funding to Consultant.
3. The Consultant shall have no interest and shall not acquire any interest, direct or indirect, which conflicts with the faithful performance of this agreement.
4. In addition to the requirements of the City Charter and the State Government, the City will not permit Consultants to perform oversight on any jobs where there is any conflict of interest between the Consultant and other firms involved in the project.
5. Consultants doing business with the City are prohibited from contributing to candidates. No person who contracts with the City and County of San Francisco for the rendition of personal services; for the furnishing of any materials, 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 candidate for such an office, or committee controlled by such an officer or candidate at any time between commencement of negotiations and either the completion of, or the termination of negotiations for such contract.



F. Business Tax Registration

In accordance with San Francisco City Ordinance 345-88, all vendors conducting business with the City are required to maintain a valid business tax registration number. Agreements will not be awarded to the successful proposer unless business tax registration fees are paid in full by the time the agreement is awarded. Consultants can register for a current certificate with the Business Tax Division of the Office of the Treasurer and Tax Collector, City Hall - Room 140, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102.

G. Compliance with the Americans with Disabilities Act (Refer to Appendix E - Section 39 of the Sample Master Agreement)

H. Prohibition on Political Activity with City Funds (Refer to Appendix E – Section 46 of the Sample Master Agreement)

I. Earned Income Credit (EIC) Forms (Refer to Appendix E – Section 32 of the Sample Master Agreement)

J. Debarment and Suspension Certification

The Consultant shall have to comply with, and file along with its proposal completed copies of the Certification of Proposer Regarding Debarment and Suspension and Certification of Subcontractor, Lower-Tier Subcontractor or Supplier Regarding Debarment and Suspension Forms in Appendix D.

In the event that any work performed under as-needed professional services contracts is funded by Federal or State grants funds, unless the granting agency has no restrictions on the use of such funds, DPW requires Consultants and Subconsultants responding to an RFQ to sign a declaration involving self-identification of any debarments or suspensions on any contracts in excess of \$25,000.

1. Non-compliance could result in the federal government revoking funding for the contract.

1) The submission of a debarment or suspension declaration form does not necessarily affect the award of the contract. The language included in the Federal Declaration form states that information about debarment or suspension does not automatically result in denial of a contract award but the information will be used to determine contractors' responsiveness.

K. Federal and State Grant Funds

1. Projects funded by Caltrans and any other Federal or State grantor that do not allow the HRC's LBE program for its procurement, cannot utilize this as-needed contract.

L. Chapter 12P – Minimum Compensation Ordinance (MCO)

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

the contractual requirements of the MCO, see Section 43 of "Requiring Minimum Compensation for Covered Employees" in the Sample Master Agreement - Appendix E. For additional information, refer to Office of Labor Enforcement website at [www.sfgov.org/olse](http://www.sfgov.org/olse).

Note that the gross hourly compensation for covered employees for For-Profit entities is \$11.69.

The MCO rate for non-profit corporations and government entities shall remain at \$11.03.

The Consultant shall have to comply with, and file along with its proposal a completed copy of the Minimum Compensation Ordinance (MCO) Declaration form in Appendix D.

M. Chapter 12Q – Health Care Accountability Ordinance (HCAO)

The successful proposer will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. (Refer to Appendix E – Section 44 of the Master Agreement Sample)

The Consultant shall have to comply with, and file along with its proposal a completed copy of the Health Care Accountability Ordinance (HCAO) Declaration form in Appendix D.

N. First Source Hiring Program (FSHP) (Refer to Appendix E – Section 45 of the Sample Master Agreement)

The First Source Hiring Program is Chapter 83 of the Admin. Code, and it applies to: (a) entry-level positions for work performed by a contractor in the City; (b) entry-level positions for work performed by a contractor in Alameda, San Francisco or San Mateo counties; (c) entry-level positions for work performed on the contract on property owned by the City; and (d) entry-level positions for work done under a permit authorization on a development project in the City.

The Consultant shall have to comply with, and file along with its proposal a completed copy of the First Source Hiring Program (FSHP) Declaration form in Appendix D.

O. Automated Clearing House (ACH) "Electronic" Payments: (Refer to Appendix E – Section 62 of the Sample Master Agreement)

## **SECTION 11.0 – PROTEST PROCEDURES**

A. Protest of Non-Responsiveness Determination

After receipt of bid proposals, the project team will initially review all proposals for responsiveness, and will notify all non-responsive firms with a Notice of Non-responsiveness. Within five (5) working days of the City's issuance of non-responsiveness, any firm that has submitted a proposal and believed that the City has incorrectly determined that its proposal is non-responsive may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth (5<sup>th</sup>) 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 Contract Award

Within five (5) working days of the City's notification, any firm that has submitted a responsive proposal and believes that the City has incorrectly selected another proposer for award may submit a written notice of protest.

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:

Department of Public Works  
Project Controls and Services  
30 Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94102  
Attn: Severino (Jun) Caranto – Contract Manager

## **SECTION 12.0 – CONTRACT SERVICE ORDER (CSO) ADMINISTRATION**

Work under this as-needed contract is project-driven, and no particular tasks have yet been specified. Since the exact nature and timing of anticipated work done under this as-needed contract is not known, the City will prepare site specific project requirements as the need for these services arise. Each site-specific project shall be executed through individual Contract Service Orders (CSOs) operating within the framework of the Master Agreement.

For each CSO, the City will coordinate the scope of work and request a Proposal from the selected consultant. The final scope of work, cost, and schedule will be negotiated with the Consultant who will perform the work. Upon agreement of scope, cost, and schedule, and upon City Controller's certification of funding, the City will issue the Notice to Proceed.

After the project has started, progress payment reports using the following HRC forms shall be submitted to the Contract Manager:

- HRC Form 7 - Progress Payment
- HRC Form 8 - Exit Report & Affidavit
- HRC Form 9 - Payment Affidavit

In the event that the Consultant to whom a CSO is issued fails to commence and/or prosecute the work as specified in the CSO, the City may, at its own discretion, have the work performed by one of the other selected Consultants.

Work will be rotated as equally as possible among the selected firms at the discretion of the City.

### **Electronic CSO**

CSO awards and modifications will be processed and approved electronically utilizing the Microsoft SharePoint© software. Participating contractors and consultants agree to execute CSOs electronically after, 1) executing a Confidentiality Agreement provided by the City on behalf of its company, 2) having all authorized company representatives that will execute CSOs complete training on using this electronic approval system (training to be provided by the City at no expense to contractors and consultants), and 3) submitting a completed executed User Access Setup form for each company representative using the electronic CSO approval system. Consultants shall also agree to immediately notify the City of any changes to authorized users of this CSO approval system.

### **Automated Clearing House (ACH) "Electronic" Payments**

The City will issue payments to Contractor through the City's electronic payment system called PayMode-X®. Refer to Section 62 of the Sample Master Agreement (Appendix E).

**APPENDIX A: RFQ PROPOSAL SUBMITTAL EVALUATION**

(Refer to Sections 4, 5, and 7 of the RFQ.)

Written Proposal Evaluation Criteria	Weight	Score (0–100)	Weighted Score
<p><b>Prime Consultant or Joint Venture Qualifications</b></p> <ul style="list-style-type: none"> <li>• Describe relevant experience to successfully perform roles and responsibilities of your firm in providing Mechanical/Electrical engineering services.</li> <li>• Describe how the workload might be organized, divided or assigned. Demonstrate that there are no overlaps or gaps in services.</li> <li>• Describe relevant projects.</li> </ul>	<b>50%</b>		
<p><b>Team Qualifications and Experience</b></p> <ul style="list-style-type: none"> <li>• Discussion of your team's background and experience that demonstrate ability to successfully provide Mechanical/Electrical engineering services.</li> <li>• Describe your team's project management, cost control, and change management procedures.</li> <li>• Detail how your team will be organized to provide services and to respond on an as-needed basis.</li> <li>• Experience with partnerships or working with integrated teams of staff of the City or other government entities.</li> <li>• Experience in scheduling and ability to complete projects within the project schedule.</li> <li>• Other relevant qualifications and experience.</li> </ul>	<b>40%</b>		
<p><b>Overall Approach</b></p> <ul style="list-style-type: none"> <li>• How will team conduct specific major tasks and prepare anticipated deliverables.</li> <li>• Describe your Quality Assurance/Quality Control program.</li> <li>• Describe your plan to ensure that the LBE Goal is met during the contract.</li> <li>• Other ideas in managing as-needed services.</li> </ul>	<b>10%</b>		
<b>PROPOSAL SCORE</b>			
<b>Plus Applicable HRC Rating Bonus</b>			
<b>ADJUSTED PROPOSAL SCORE</b>			

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## **APPENDIX B: FEE SCHEDULE**

### **A. General**

1. One original and one copy of the team's Fee Schedules shall be submitted separately in a sealed envelope and delivered with the proposal package. The sealed envelope shall be titled "**FEE SCHEDULE**" and include the contract number and title of this RFQ, as well as the name of the Prime Consultant firm and the Joint Venture partner firm, if applicable.
  - a. A Fee Schedule must be completed by the Prime Consultant firm, each sub-consultant listed in HRC Form 2A, and the Joint Venture partner firm, if applicable.
  - b. The Fee Schedule consists of the Hourly Billing Rate Table and the Calculation of Fringe Benefits and General Overhead Rates Table. Refer to Tables B1 and B2 below.
2. The Fee Schedule does not affect the selection process and will be used in contract negotiations with the successful Consultants. Only the Fee Schedule sealed envelopes of selected Consultants will be opened after selection.
3. All billable staff rates shall be fully burdened to include direct labor, benefit, taxes, profit, fringe benefits, health care benefit surcharge, minimum compensation accountability surcharge, call out surcharges, other surcharges, costs for obtaining insurance and bonds, employee fringe benefits, employee paid time off, employee training, support and administrative services, ancillary charges, and other general overhead.
4. Administrative and clerical support services are considered part of overhead.
5. Billing Rates listed in Master Agreement shall be one single rate for the 5-year length of the contract and shall remain in effect throughout the term of the contract for both the Contractor and subcontractors.

### **B. Other Direct Charges (ODCs) – Applicable to all Business Structures**

Reimbursement of ODCs is based upon the consistent treatment of these types of costs over the Consultant's company as a whole. If not included in a firm's audited overhead, ODCs shall be limited to the following items, where applicable:

1. Consultant and Subconsultant shall each receive a 5% markup on the total cost of their respective Lower-Tier Subconsultants. In no case shall the markups applied to the total cost exceed 10% regardless of the number of Subconsultant tiers involved in performing the Work.
2. Travel Expenses

Travel expenses will be reimbursed only when work locations are outside of nine Bay Area counties (Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma) and only with prior approval. Expenses associated with travel to and from Consultant or all levels of Sub Consultant's offices located outside San Francisco to and from work sites within San Francisco are not reimbursable.

All approved project-related travel expenses, such as lodging, transportation costs, subsistence costs, and other costs reasonably and necessarily incurred shall be reimbursed only when documentation is provided. Reimbursements will be denied if documentation is incomplete.

All project-related travel extending beyond twenty (20) days at any one location in and thirty (30) day period requires a written plan to control costs through the use of appropriate long term accommodations. This plan must be accepted by the Contract Manager in writing prior to travel. All project-related travel in excess of four (4) weeks must not exceed State Non-Commercial Per-Diem rates.

a. Transportation

Consultants will be expected to contract for the lowest published routine fare for travel by the most efficient, direct, and economical mode of transportation required for the project. If an alternative mode of transportation is selected, the allowable cost shall be the lower of the actual cost of alternative modes of transportation or the lowest regular fare available for regularly scheduled airlines for the date and time selected.

- Use of Personal and Company Vehicles and Mileage Reimbursement Rates

The mileage rate for use of privately owned automobiles and company vehicles only in connection with project-related travel shall be the Internal Revenue Service (IRS) standard mileage rate for business use of an automobile per mile. The IRS standard mileage rate for business use of an automobile per mile is subject to change yearly. No markup applies.

b. Lodging

The most economical and practical accommodations available considering the purpose of the meeting, and other relevant factors will be reimbursed. For travel within the United States, the Federal maximum rates for lodging will be used as a guide. An itemized hotel bill is always required for reimbursement to be made. Lodging for travel within the local commuting area requires additional justification. For the City and County of San Francisco, local commuting area is defined as within the nine Bay Area counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.

Federal domestic and foreign lodging, maximum travel per diem allowances, meals and incidental expense breakdowns are available from the following website of U.S. General Services Administration at: <http://www.gsa.gov/perdiem>

c. Meals and Adoption of the Federal Meal and Incidental Expense (M&IE) Rate

The Federal rate of meal and incidental expense (M&IE) will be paid without itemization of expenses or receipts. Even with receipts, the maximum reimbursement for project-related meals will be limited to double the amount of the Federal M&IE rate. Travel in the local commuting area (within the physical boundary of the City and County of San Francisco) does not qualify for the per diem reimbursement.



- Federal Meal & Incidental Expense (M&IE) Rate Chart

When a per diem reimbursement is requested for part of a day, please use the rates in the following chart to determine meal reimbursements. Each city in the Federal rate guide has a dollar value for the full day depending on the relative cost of meals in that jurisdiction. Once you obtain the total dollar value, you can refer to this website: <http://www.gsa.gov/perdiem> or to the following table to determine the rates for each meal:

*Federal Domestic Meal & Incidental Expense (M&IE) Rates Effective November 11, 2011*

<b>M&amp;IE Rate (Full Day)</b>	<b>\$46</b>	<b>\$51</b>	<b>\$56</b>	<b>\$61</b>	<b>\$66</b>	<b>\$71*</b>
Breakfast	\$7	\$8	\$9	\$10	\$11	\$12
Lunch	\$11	\$12	\$13	\$15	\$16	\$18
Dinner	\$23	\$26	\$29	\$31	\$34	\$36
Incidentals	\$5	\$5	\$5	\$5	\$5	\$5
First & Last Day of Travel	\$34.50	\$38.25	\$42	\$45.75	\$49.50	\$53.25

\* Rate for San Francisco

d. Other Expenses

Other project-related travel expenses deemed necessary and reasonable include ground transportation (to or between the Consultant's work site and airport, bus station, train depot and the meeting or lodging site and return); and other costs associated with and incurred while in project-related travel status. This includes parking fees, bridge tolls, necessary business telephone charges, copying charges, and project-related internet access. Original receipts are required to be submitted with reimbursement requests.

e. Non-Allowable and Non-Reimbursable Costs: The following items will not be reimbursed unless approved by the City during the CSO Proposal stage:

<b>Type</b>	<b>Examples</b>
Travel / Transportation	<ul style="list-style-type: none"> <li>Unjustified car rental and/or upgrade of mode of transportation.</li> <li>Unjustified consultant parking and cab fare to meeting locally.</li> <li>Auto / flight insurance.</li> <li>Parking / moving violation tickets or other penalties for infractions of any law, repair of automobiles and towing charges.</li> <li>Passport application fees.</li> <li>Unjustified cancelled travel tickets and change / cancellation costs.</li> </ul>

<b>Type</b>	<b>Examples</b>
Lodging	<ul style="list-style-type: none"> <li>• Unjustified upgrade of hotel / room.</li> <li>• Payment for accommodations with friends / relatives.</li> <li>• Unjustified lodging during training / meetings within the 9 Bay Area Counties</li> <li>• Hotel movies</li> </ul>
Meals	<ul style="list-style-type: none"> <li>• Unjustified meals in lieu of training / meeting provided meals.</li> <li>• Alcoholic beverages</li> </ul>
Other Expenses	<ul style="list-style-type: none"> <li>• Boarding costs of pets and children during travel.</li> <li>• Damaged or stolen personnel or City properties due to Consultant's negligence.</li> <li>• Decorations.</li> <li>• Excessive personal phone calls from hotels when traveling.</li> <li>• Flowers / greeting cards / gifts.</li> <li>• Personal laundry / dry cleaning.</li> <li>• Significantly large tips.</li> </ul>

3. All project-related printing and reproduction costs shall be reimbursed at the actual rate charged by an outside printing firm as documented by original receipts.
4. Project specific use of specialized equipment. Compensation for equipment rental shall be paid for at the rates listed in Labor Surcharge and Equipment Rental Rates issued by the State of California, Business Transportation, and Housing Agency, Department of Transportation (Caltrans) Construction Program, plus 5%.
5. Cost for labor hours must be charged as direct labor and not be included in any Other Direct Charges.
6. Consultants must maintain accurate accounting records sufficient to prove the actual rate(s) any other cost information supplied to DPW.
7. Fully depreciated equipment requires a special advance agreement to allow any charge on the agreement.
8. Other Direct Charges are to be charged at actual audited cost exclusive of any burden or mark-up.
9. Non-Reimbursable Ancillary Items:

The City will not approve payment of ancillary charges. These items are considered part of work to perform the job. These costs are considered to be included in the billable staff rate. These costs include, but are not limited to:

- Blackberries, iPhones
- Cameras
- Cellphones, calls, faxes
- Computers
- Normal Office Copies
- First aid kits
- Office equipment
- Office supplies
- PDAs, iPads, tablets
- Photocopiers
- Respirators
- Safety equipment
- Telephones, calls
- Tools

**C. Supporting Documentation**

6. All overhead rates, direct labor, and other direct charges supporting documentation is considered confidential and any release of this information must be approved by the San Francisco City Attorney's Office. The Contract Manager is responsible for ensuring that Consultant proprietary information is not shared outside of DPW except with the approval of the San Francisco City Attorney's Office.

**D. Unallowable Items in Overhead Rates**

1. All applicable unallowable items under the Federal Acquisition Regulations (FAR) 31.205 shall apply to this RFQ. The unallowable items shall be excluded from the calculations for Fringe Benefits and Overhead Rates. The following list (not exhaustive) shows examples of FAR unallowable costs:
  - Bad Debts
  - Contingencies
  - Contributions and donations
  - Dividends
  - Entertainment
  - Fines, penalties and mischarging costs
  - Interest and other financial costs
  - Idle or excess facilities
  - Losses on other contracts
  - Organization costs
  - Plant reconversion costs
  - Special funds construction
  - Deferred R&D
  - Lobbying Costs (legislative & executive)
  - Defense of fraud
  - Goodwill
  - Alcoholic beverages
  - Advertising promoting the contractor or its products
  - Special compensation as a result of changes in management
  - Direct selling efforts for Foreign Military Sales
  - Costs of promotional items
  - Memberships in social, dining or country clubs
  - Commercial air travel in excess of standard fares
  - Gifts
  - Recreation
2. The Department of Public Works further restricts the following unallowable costs from the calculation of Fringe Benefits and Overhead Rates:

- Incentive/Bonus Payments
- Profit Sharing
- Employee Lunch and Meeting Expenses
- Travel/Lodging Expenses
- Personal Car Expenses

**E. Hourly Billing Rates Table**

1. The Prime Consultant, each partner of a Joint Venture, if applicable, and each Subconsultant shall submit hourly billing rates for positions that are anticipated to be utilized in this contract. Refer to Table 1 for an example of billing rates table. In addition to the hourly billing rates table, indicate on the form the following:
  - Overhead Multiplier
  - Total permanent employees, including owners
2. Submit the billing rates form on company letter head signed by the Principal.
3. Submit the calculation table for the fringe benefits and general overhead. Refer to Table B2 below. Consultant may submit an audited statement of Company Overhead in lieu of Table B2. Consultant shall make sure that no unallowable items are included in the overhead calculations. Refer to paragraph D above for unallowable items.

Example:

For a Principal position with Direct Labor cost of \$80.00, assume a total overhead rate of 170% per the Company Financial Statement or Overhead Calculation Table.

1. Calculate the Overhead Multiplier "M":

$$\text{Overhead Multiplier (M)} = \frac{170\%}{100\%} + 1 = 2.70$$

2. Calculate the Subtotal of Labor "B":

$$B = 80.00 * 2.70 = 216.00$$

3. Calculate the total Billing Rate "C" by including a maximum profit of 10%:

$$C = 216.00 * 1.10 = 237.60$$

The Final Billing Rate for this sample position is \$237.60.

**TABLE B1**

**Note: Submit Hourly Billing Rate Table on Company Letterhead signed by the Principal or Authorized individual for the Firm.**

[Name of Firm]

**HOURLY BILLING RATE TABLE**

Overhead Multiplier (M) = \_\_\_\_\_

Job Classification <i>(Examples Only)</i>	Direct Labor Rate (\$/hr)	Subtotal Labor Rate (A x M)	Billing Rate (B x 1.1)
	<b>A</b>	<b>B</b>	<b>C</b>
Principal <i>(example)</i>	80.00	216.00	237.60
Senior Engineer			
Engineer			
Project Engineer			
Associate Engineer			
Project Manager			
Technician			
Cost Estimator			
Project Controls			
Quality Control			

Overtime Billing Rate = (Fully Burdened Rate) x 1.5

TOTAL PERMANENT EMPLOYEES, including owners: \_\_\_\_\_

Hourly Billing Rates for Job Classifications listed above are one single rate for the term of the contract and will remain in effect throughout the term of the contract for the Prime Consultant, all Sub-consultants, and Joint Venture Partner, if applicable.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Position: \_\_\_\_\_

**TABLE B2**

**Note: You may submit an audited statement of Company Overhead in lieu of this table.**

**[Name of Firm]**  
**CALCULATION OF FRINGE BENEFITS AND GENERAL OVERHEAD RATES**  
For the Fiscal Year Ended [mm/dd/yyyy]

Descriptions <i>(Examples Only)</i>	Financial Statement Expenses	<sup>1</sup> Unallowable Expenses (-)	Total Proposed	% Rate over Direct Labor
<b>Direct Labor</b>		<b>(A)</b>	\$	
<b>Fringe Benefits</b>				
Group Insurance	\$	\$	\$	
Holiday	\$	\$	\$	
Payroll Taxes	\$	\$	\$	
Retirement Contribution	\$	\$	\$	
Sick Leave	\$	\$	\$	
Vacation	\$	\$	\$	
Other:	\$	\$	\$	
<b>Total Fringe Benefits (B)</b>			\$	
<b>General Overhead</b>				
Indirect Labor (Clerical & Administrative)	\$	\$	\$	
Advertising / Promotional Materials	\$	\$	\$	
Bid and Proposal Costs	\$	\$	\$	
Company Automobile Expenses	\$	\$	\$	
Computer Expenses	\$	\$	\$	
Depreciation and Amortization	\$	\$	\$	
General Insurance	\$	\$	\$	
Indirect Computer Costs	\$	\$	\$	
Legal and Accounting	\$	\$	\$	
Non-Project Related Production Supplies	\$	\$	\$	
Office Supplies	\$	\$	\$	
Professional Liability Insurance	\$	\$	\$	
Registrations and Licenses	\$	\$	\$	
Space Costs (Bldg Rental and Expenses)	\$	\$	\$	
Taxes and Permits	\$	\$	\$	
Telephone	\$	\$	\$	
Temporary Help	\$	\$	\$	
Training and Education	\$	\$	\$	
Utilities	\$	\$	\$	
Other:	\$	\$	\$	
<b>Total General Overhead (C)=</b>			\$	
<b>Total Overhead Rate (B+C)=</b>				

<sup>1</sup> Refer to Unallowables under paragraph D of Appendix B.

### **APPENDIX C: HRC ATTACHMENT 2 AND FORMS**

- Submit one (1) original and two (2) copies of all required HRC Forms submitted separately in a sealed envelope and delivered with the proposal package.

Note: Fillable forms of HRC Attachment 2 may be downloaded online from the following HRC website: <http://www.sf-hrc.org/index.aspx?page=73>

Submit digital copies of above items as separate PDF files on a **Compact Disc** (CD).

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# CITY & COUNTY OF SAN FRANCISCO HUMAN RIGHTS COMMISSION



## HRC ATTACHMENT 2

### *Requirements for Architecture, Engineering, & Professional Services Contracts*

FOR CONTRACTS \$50,000 AND OVER

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#### **PART I. GENERAL**

##### **1.01 SAN FRANCISCO ADMINISTRATIVE CODE CHAPTERS 12B AND 14B**

- A. To be eligible for this contract award, prime proposers must agree to comply with the Local Business Enterprise ("LBE") requirements sanctioned by San Francisco Administrative Code Chapter 12B, Section 12B.4 and Chapter 14B, and its implementing Rules and Regulations. Chapters 12B and 14B are administered and monitored by the San Francisco Human Rights Commission ("HRC").
- B. Chapters 12B and 14B and their implementing Rules and Regulations are incorporated by reference herein as though fully set forth and provide that the failure of any proposer or consultant to comply in good faith with these requirements shall be deemed a material breach of contract. Copies of both Chapters 12B and 14B and their implementing Rules and Regulations are available on the HRC website at <http://www.sf-hrc.org/>.
- C. Chapter 14B allows for a ten percent (10%) rating discount, referred to in this Attachment 2 as a "rating bonus," for HRC certified Small – or Micro LBE's. Subject to certain limitations and exceptions, HRC SBA-LBEs may be entitled to a two percent (2%) rating bonus. Joint Ventures with Small or Micro-LBE participation may be entitled to a five percent (5%), seven and a half percent (7.5%), or to 10 percent (10%) rating bonus. The Certification Application is available on the HRC website at <http://www.sf-hrc.org/>.

*For assistance with HRC Attachment 2, please contact the following number(s):*

*HRC Main Office (415) 252-2500 or LBE Certification Unit (415) 252-2531*

*For compliance and assistance with the Equal Benefits Program, please contact the HRC Main Office.*



**1.02 SUBMISSION OF HRC FORMS**

- A. **Unless otherwise authorized** by HRC, the proposer must submit the following HRC forms in a separate sealed envelope marked “HRC Forms” with the proposal. Failure to complete or submit any of the HRC Forms may cause the proposal to be deemed non-responsive and ineligible for contract award.

Proposers are responsible for reviewing the specific instructions and requirements on each HRC form.

1. **Form 2A: HRC Contract Participation Form:** Identify LBE subconsultants, vendors, and lower tier subconsultants that the proposal relies on to meet LBE subconsultant participation goal. Check the appropriate box under Rating Bonus.
2. **Form 2B: HRC “Good Faith Outreach” Requirements Form:** Document solicitation of LBE participation. This form must be submitted for every solicitation that includes LBE subconsultant participation. Proposer shall meet the specified LBE subcontractor participation goal and shall complete and submit Form 2B in accordance with Form 2B instructions.

In accordance with Section 14B.8(B) of the Administrative Code ("Code"), if a proposer does not demonstrate in its proposal that proposer exceeds the established LBE subcontracting participation goal by at least 35%, such proposer must demonstrate adequate good faith efforts to meet the LBE subconsulting goal. Such proposer must complete and submit Form 2B as required by Form 2B instructions and must submit all good faith documentation as specified in Form 2B with its proposal. Failure to meet the LBE subconsulting participation goal and demonstrate/document adequate good faith efforts shall cause the proposal to be determined non-responsive and rejected.

If a proposer demonstrates in its proposal that it exceeds the established LBE subconsulting participation goal by 35% or more, such proposer is not required to conduct good faith outreach efforts or to submit evidence of good faith efforts. Such proposer shall complete and submit Form 2B as required by Form 2B instructions. **NOTE: A SMALL OR MICRO-LBE PRIME PROPOSER MAY COUNT ITS OWN CONTRACT WORK TOWARD THE 35% GOOD FAITH EFFORTS EXCEPTION.**

- *Example:* The LBE subconsulting goal is 10%. Good faith efforts requirements will be waived if the Proposer:
  - 1) Meets the 10% LBE subconsulting goal;
  - AND**
  - 2) Has total LBE participation that equals or exceeds 13.5% of the total proposal amount. The 13.5% represents the 10% LBE subconsulting goal plus 35% of that 10% subconsulting goal.

LBE subconsulting goal set for project	10.0%
35% of the 10% LBE subconsulting goal	3.5%
<b>Total LBE participation must equal or exceed:</b>	<b>13.5%</b>

3. **Form 3: HRC Non-Discrimination Affidavit:** Must be signed by Proposer under penalty of perjury.
4. **Form 4: HRC Joint Venture Form:** Submit ONLY if the Proposer is requesting a rating bonus based on LBE participation in a joint venture partnership.
5. **Form 5: HRC Employment Form:** List the key personnel and responsibilities of the Proposer, Joint Venture partners, and Subconsultants.



## B. HRC Contract Performance Forms

Proposers are responsible for reviewing the instructions and requirements on each form. The following HRC forms are submitted with progress and final payment requests.

1. **Form 7: HRC Progress Payment Form:** Submit to Contract Awarding Authority and to HRC for each payment request. *Note:* Page 2; column "A" of the form, ALL firms must be continuously listed including lower tier subconsultants for each payment request.
2. **Form 9: HRC Payment Affidavit:** Submit within ten (10) working days to Contract Awarding Authority and HRC following receipt of each progress payment from the Contract Awarding Authority. This form must be submitted EVEN if there were no payments to subconsultants associated with the progress payment.
3. **Form 8: HRC Exit Report and Affidavit: Submit with final Form 7. A separate Form 8 must be** completed for each LBE Joint Venture partner and LBE subconsultant (including lower-tier LBEs).
4. **Form 10: HRC Contract Modification Form:** This form shall be completed by the Consultant when any (all) amendments, modifications, or supplemental change orders that cumulatively increase the original contract amount by more than 20%, and then for all subsequent modifications.

Failure to submit any HRC contract performance forms may result in sanctions under Section 14B.11.C including but not limited to withholding or delaying progress and final payments.

## 1.03 "GOOD FAITH OUTREACH" REQUIREMENTS

All proposers shall undertake adequate good faith outreach as set forth in Section 14B.8(D) of the Administrative Code to select subconsultants to meet the LBE subconsulting participation goal, unless a proposer qualifies for the good faith efforts exception set forth in Section 14B.8(B) for proposers that demonstrate in their proposals that they exceed the established LBE subconsulting participation goal by 35% or more. Please see example in Section 1.02A.2 above.

Under Section 14B.8(C) of the Code, proposals that do not meet the LBE subconsulting participation goal set will be rejected as non-responsive unless the HRC Director finds that the proposer diligently undertook adequate good faith efforts required by Chapter 14B and that the failure to meet the goal resulted from an excusable error.

A proposer must contact an LBE before listing that LBE as a subconsultant in the proposal. A proposal that fails to comply with this requirement will be rejected as non-responsive. Proposers are required to submit Form 2B and supporting documentation EVEN IF the LBE subconsulting goal has been met.

## 1.04 NON COMPLIANCE AND SANCTIONS

### A. Non-Compliance with Chapter 14B

1. A complaint of discrimination or non-compliance concerning LBE participation initiated by any party after contract award will be processed in accordance with Chapter 14B and its implementing rules and regulations.
  - a. If the HRC Director determines that there is cause to believe that a consultant has failed to comply with any of the requirements of the Chapter 14B, HRC Rules and Regulations, or



contract provisions pertaining to LBE participation, the HRC Director shall notify the contract awarding authority and attempt to resolve the non-compliance through conference and conciliation.

- b. If the non-compliance is not resolved through conference and conciliation, the HRC Director shall conduct an investigation and, where the Director so finds, issue a written Finding of Non-Compliance.
  - c. The Director's finding shall indicate whether the consultant acted in good faith or whether noncompliance was based on willful or bad faith noncompliance with the requirements of Chapter 14B, HRC Rules and Regulations, or contract provisions pertaining to LBE participation.
1. Where the Director finds that the consultant acted in good faith, after affording the consultant notice and an opportunity to be heard, the Director shall recommend that the contract awarding authority take appropriate action. Where the Director finds willful or bad faith noncompliance, the Director shall impose sanctions for each violation of the ordinance, HRC rules and regulations, or contract provisions pertaining to LBE participation, which may include:
    - i) reject all proposals;
    - ii) declare a proposal non-responsive;
    - iii) suspend a contract;
    - iv) withhold funds;
    - v) assess penalties;
    - vi) debarment;
    - vii) deny HRC certification;
    - viii) revoke HRC certification; or
    - ix) pursuant to 14B.7(H)(2), assess liquidated damages in an amount equal to the consultant's net profit on the contract, 10% of the total amount of the contract or \$1,000, whichever is greatest as determined by HRC.
  2. The Director's determination of non-compliance is subject to appeal pursuant to HRC Rules and Regulations.
  3. An appeal by a consultant to the Commission shall not stay the Director's findings.
  4. The HRC Director may require such reports, information and documentation from consultants, subconsultants, contract awarding authorities, and heads of departments, divisions, and offices of the City and County as are reasonably necessary to determine compliance with the requirements of Chapter 14B.

**B. Procedure for the collection of penalties is as follows:**

1. The HRC Director shall send a written notice to the Controller, the Mayor and to all contract awarding authorities or City and County department officials overseeing any contract with the proposer or consultant that a determination of bad faith non-compliance has been made and that all payments due the proposer or consultant shall be withheld.
2. The HRC Director shall transmit a report to the Controller and other applicable City departments to ensure that the liquidated damages are paid to the City.

**PART II. RATING BONUS**

**2.01 APPLICATION**

- A. **Eligibility for the LBE Rating bonus:** Certified Small or Micro-LBEs, including certified non-profit organizations, are eligible for an LBE rating bonus if the LBE is HRC certified in the type of work that



is called out by the Contract Awarding Authority. Under certain circumstances, SBA LBE's are eligible for an LBE rating bonus. A proposer that has a certification application pending, that has been denied certification, that has had its certification revoked or that is in the process of appealing an HRC denial or revocation at the date and time the proposal is due is not an LBE and is not eligible to receive the rating bonus even if the firm is later certified or ultimately prevails in its appeal.

- B. **Application of the Rating bonus:** The following rating bonus shall apply at each stage of the selection process, i.e., qualifications, proposals, and interviews:
1. **Contracts with an Estimated Cost in Excess of \$10,000 and Less Than or Equal To 400,000.** A 10% rating bonus will apply to any proposal submitted by an HRC certified Small or Micro-LBE. Proposals submitted by SBA-LBEs are not eligible for a rating bonus.
  2. **Contracts with an Estimated Cost in Excess of \$400,000 and Less Than or Equal To \$10,000,000.** A 10% rating bonus will apply to any proposal submitted by an HRC certified Small or Micro-LBE ...Pursuant to Section 14B.7(E), a 2% rating bonus will be applied to any proposal from an SBA-LBE, except that the 2% rating bonus shall not be applied at any stage if it would adversely affect a Small or Micro-LBE proposer or a JV with LBE participation.
  3. **Contracts with an Estimated Cost In Excess of \$10,000,000 and Less Than or Equal To \$20,000,000.** A 2% rating bonus will apply to any proposal submitted by an SBA-LBE..
  4. **The rating bonus for a Joint Venture (“JV”) with LBE participation that meets the requirements of Section 2.02 below is as follows for contracts with an estimated cost of in excess of \$10,000 and Less Than or Equal to \$10,000,000:**
    - a. 10% for each JV among Small and/or Micro LBE prime proposers.
    - b. 5% for each JV which includes at least 35% (but less than 40%) participation by Small and/or Micro-LBE prime proposers..
    - c. 7.5% for each JV that includes 40% or more in participation by Small and/or Micro-LBE prime proposers.
    - d. The rating bonus will be applied by adding 5%, 7.5%, or 10% (as applicable) to the score of each firm eligible for a bonus for purposes of determining the highest ranked firm. Pursuant to Chapter 14B.7(F), SBA-LBEs are not eligible for the rating bonus when joint venturing with a non LBE firm. However, if the SBA-LBE joint ventures with a Micro-LBE or a Small-LBE, the joint venture will be entitled to the joint venture rating bonus only to the extent of the Micro-LBE or Small-LBE participation described in Section 2.01B.4b. and c. above.
  5. A 10% rating bonus for HRC LBE certified non-profit agencies for contracts estimated in excess of \$10,000, but less than or equal to \$10,000,000.
- C. The Rating Bonus for Small or Micro-LBEs or JVs does not apply for contracts estimated by the Contract Awarding Authority to exceed \$10 million. The rating bonus for SBA-LBEs does not apply for contracts estimated by the Contract Awarding Authority to exceed \$20 million.

## 2.02 JOINT VENTURE/PRIME ASSOCIATION

- A. Each Small and/or Micro-LBE JV partner must be responsible for a clearly defined portion of the work to be performed. The rating bonus is applied only when the Small and/or Micro-LBE partner has sufficient skill, experience, and financial capacity to perform the portion of the work identified for the Small and/or Micro-LBE. This portion must be set forth in detail separately from the work to be performed by the non-LBE JV partner. The joint venture partners must be of the same discipline/each possess the license required by the RFP and the LBE partner(s) must be HRC LBE certified in that area in order to be eligible for the rating bonus. The joint venture partners must be jointly responsible for the overall project management, control, and compliance with 14B requirements.



1. The Small and/or Micro-LBE JV partner's work must be assigned a commercially significant dollar value of the prime work and use its own employees and equipment.
  2. Each member of the joint venture must perform a “commercially useful function” as that term is defined by Section 14B.2 of the Ordinance. A Small and/or Micro-LBE JV partner that relies on the resources and personnel of a non-LBE firm will not be deemed to perform a “commercially useful function.”
  3. The following actions are prohibited: i) the non-LBE JV partner performing work for the Small and/or Micro-LBE JV partner; ii) leasing of equipment or property by the Small and/or Micro-LBE JV partner from the non-LBE JV partner; and iii) the hiring of the non-LBE JV partner’s employees by the Small and/or Micro-LBE JV partner.
  4. The Small and/or Micro-LBE JV partner must share in the ownership, control, management and administrative responsibilities, risks, and profit of the JV in direct proportion to its stated level of JV participation.
  5. The Small and/or Micro-LBE JV partner must perform work that is commensurate with its experience.
  6. A JV must submit an executed JV agreement and management plan detailing each JV partner’s responsibilities and tasks.
  7. A JV must obtain a Federal ID number for that entity.
  8. A JV must obtain a tax registration certificate from the City Tax Collectors Office for that entity.
- B. A prime association or partnership is considered the same as a joint venture and must comply with all the JV requirements stated above.
- C. The proposal items to be performed by the Small and/or Micro-LBE JV partner must be identified separately and all work must be accounted for, including subconsulting work.
- D. The cost of the work to be performed by the Small and/or Micro-LBE JV partners is to be calculated as a percentage of the work to be performed by the joint venture partners. The joint venture should deduct the amount of work to be performed by subconsultants from its total contract amount. This percentage is used to determine whether or not the joint venture is eligible for a rating bonus.

**EXAMPLE:**

Step 1. Calculate total JV partner work:

Total Contract Work	=	100%
Percentage of Total Contract Work Performed by Subconsultants	-	40%
Percentage of Total Contract Work Performed by JV partners	=	60%

Step 2. Calculate Small and/or Micro-LBE JV partner work:

	A	B	C
Description of JV Partners’ Scopes of Work	JV Partners’ Work as a % of the total contract	% of Task by Non-LBE JV Partner	% of Task by Small and/or Micro-LBE JV Partner
TASK 1	5%	3%	2%
TASK 2	20%	11%	9%
TASK 3	25%	12.5%	12.5%
TASK 4	10%	6%	4%
<b>TOTAL JV Partner %</b>	<b>60%</b>	<b>32.5%</b>	<b>27.5%</b>



Step 3. Calculate Small and/or Micro-LBE JV partner work as a percentage of the total JV partner work for the rating bonus.

Total Small and/or Micro- LBE JV %	27.5%	÷	Total JV %	60%	=	45.8%
------------------------------------	-------	---	------------	-----	---	-------

The Small and/or Micro-LBE JV partner’s participation is 45.8%. The JV is therefore eligible for a 7.5% rating bonus.

**PART III SUBCONSULTANT PARTICIPATION**

**3.01 SUBCONSULTANT PARTICIPATION GOAL**

**NOTE: FOR PURPOSES OF THE LBE SUBCONSULTING REQUIREMENTS, “LBE” REFERS TO SMALL AND MICRO-LBES ONLY, UNLESS THE RFP ALLOWS FOR SBA-LBE SUBCONSULTANTS TO COUNT TOWARDS THE LBE PARTICIPATION GOAL.**

- A. All proposers shall achieve the LBE subconsultant participation goal and undertake adequate good faith outreach as set forth in Section 14B.8(D) of the Ordinance to select subconsultants to meet the LBE subconsultant participation goal unless the proposer meets the good faith outreach exception in Section 14B.8.(B). See example in Section 1.02A.2. The LBE subconsultant participation goal can only be met with HRC certified Small and Micro-LBES.

For a directory of certified LBEs, please go to:

[http://sf-hrc.org/ftp/uploadedfiles/sfhumanrights/directory/vlistS\\_1.htm](http://sf-hrc.org/ftp/uploadedfiles/sfhumanrights/directory/vlistS_1.htm).

Proposals that do not meet the LBE subconsultant participation goal set under 14B.8(A) of the Ordinance will be rejected as non-responsive unless the HRC Director finds that the proposer diligently undertook good faith efforts required by the Ordinance and that the failure to meet the goal resulted from an excusable error.

- B. Proposers must identify on Form 2A the particular LBE subconsultants and lower tier subconsultants to be utilized in performing the contract, specifying for each the percentage of participation, the type of work to be performed and such information as the HRC reasonably shall require to determine the responsiveness of the proposal.

The proposer must contact LBE subconsultants prior to listing them. LBEs must be certified with HRC on the proposal due date to receive LBE subconsulting credit. Listing an LBE that is not certified at the date and time the proposal is due will result in the loss of credit for that LBE subconsultant and may result in a non-responsive proposal.

Additionally, subconsultants may be listed by more than one proposer.

- C. A subconsultant that has a certification application pending, that has been denied certification, that has had its certification revoked or that is in the process of appealing an HRC denial or revocation at the date and time the proposal is due is not an LBE and cannot be counted as an LBE for purposes of achieving LBE subconsultant participation goal even if the firm is later certified or ultimately prevails in its appeal.
- D. HRC may require the successful proposer to submit performance reports on actual LBE participation at 30%, 50%, 70%, and 90% completion to the Contracting Awarding Authority and HRC.
- E. Determination and calculation of LBE subconsultant participation:



1. The Small and/or Micro LBE subconsultant shall be listed to perform a specific task(s), which is described in the RFP or RFQ.
2. If the Small and/or Micro-LBE subconsultant forms a joint venture with a non-LBE subconsultant, the Small and/or Micro-LBE subconsultant joint venture partner will be credited only for its portion of the work, as follows:

*EXAMPLE:*

If the total subcontract amount = \$ 1,000,000 of which \$510,000 is the Small and/or Micro-LBE JV subcontract amount and \$490,000 is the non-LBE subcontract amount, then \$510,000 is credited toward the LBE subconsultant participation goal.

3. All work done by lower-tier Small and/or Micro-LBE subconsultants will be credited toward meeting the goal.

*EXAMPLE:*

If the total subcontract amount = \$1,000,000, of which \$200,000 is the lower-tier Small and/or Micro-LBE subconsultant's portion, then \$200,000 is credited toward the LBE subconsultant participation goal.

4. If a Proposer owns or controls more than one business that is HRC certified as an Small and/or Micro-LBE, the proposer will not receive credit if it lists its other firms to meet the LBE subconsultant participation goal when submitting as a prime. In determining ownership of a business, a business owned by proposer's spouse or domestic partner shall be deemed to be owned by the proposer.
5. It is the responsibility of the proposer to verify the subconsultant's LBE certification status.
6. A Small and/or Micro-LBE subconsultant must be certified in the type of work that the Proposer lists the firm for on HRC Form 2A.
7. The Small and/or Micro-LBE subconsultant must be utilized on the contract to perform a commercially useful function. No credit will be given for a LBE that serves as a pass-through.
8. A Small and/or Micro-LBE Prime proposer must meet the LBE subconsultant participation goal. A Small and/or Micro LBE Prime proposer may not count its participation towards meeting the LBE subconsultant participation goal.
9. A Small and/or Micro-LBE Prime proposer may count its participation towards meeting the good faith outreach exception set forth in 14B.8(B).

**F. Substitution, removal, or contract modification of LBE:**

No LBE subconsultant listed on Form 2A shall be substituted, removed from the contract or have its contract, purchase order or other form of agreement modified in any way without prior HRC approval. Additionally, no new subconsultants shall be added without prior HRC approval.





## **PART IV NON-DISCRIMINATION REQUIREMENTS**

### **4.01 GENERAL**

As a condition of contract award, Consultants and subconsultants shall comply with the nondiscrimination in employment provisions required by Chapter 12B of the Administrative Code.

### **4.02 NONDISCRIMINATION PROVISIONS**

- A. Prior to the award of the contract, the consultant must agree that it does and will not, during the time of the contract or any contract amendment, discriminate in the provision of benefits between its employees with spouses and employees with domestic partners.
- B. The consultant and subconsultants on this contract will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status, weight, height, or association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Discrimination on the basis of sex includes sexual harassment as defined in Section 16.9-25(b) of this Code. The Consultant, Contractor or Subconsultant/Subcontractor will take action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to the fact or perception of their race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or AIDS/HIV status. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.
- C. **Non-Compliance with Chapter 12B Prior to Contract Award**

The consultant and any subconsultants must be in compliance with the nondiscrimination provisions of Chapter 12B, on all existing City contracts prior to award of this contract.

Prior to the award of any City contract, the HRC has the authority to review the consultant's and subconsultant's prior performance to ensure compliance with the nondiscrimination provisions of Chapter 12B.

If the HRC determines that there is cause to believe that a consultant or subconsultant is not in compliance with the nondiscrimination provisions of Chapter 12B, the HRC shall notify the contract awarding authority and attempt to resolve the non-compliance through conciliation.

1. If the non-compliance cannot be resolved, the HRC shall submit to the consultant or subconsultant and the contract awarding authority a written Finding of Non-compliance.
2. The HRC shall give the consultant or subconsultant an opportunity to appeal the Finding.
3. The HRC may stay the award of any contract to a consultant where the consultant or any subconsultant is the subject of an investigation by written notice to the contract-awarding agency.

#### **D. Complaints of Discrimination after Contract Award**

1. A complaint of discrimination in employment initiated by any party after contract award shall be processed in accordance with the HRC Rules of Procedure, adopted pursuant to Chapter 12B of the San Francisco Administrative Code.
2. A finding of discrimination may result in imposition of appropriate sanctions, including:
  - a. There may be deducted from the amount payable to the consultant or subconsultant under this contract a penalty of \$50 for each person for each calendar day the person was discriminated against in violation of the provisions of the contract.



- b. The contract may be canceled, terminated or suspended in part by the contract awarding authority.
- c. The consultant, subconsultant or vendor may be determined ineligible to perform work or supply products on any City contract for a period not to exceed two years.



**FORM 2A: HRC CONTRACT PARTICIPATION FORM**

**Section 1:** This form must be submitted with the proposal or the proposal may be deemed non-responsive and rejected. Prime Proposer, each Joint Venture Partner, Subconsultants, Vendors, and lower sub tiers must be listed on this form. Only HRC certified Small and/or Micro-LBEs can be used to meet the LBE subconsultant participation goal unless the RFP allows for SBA-LBE subconsultants to count towards the LBE participation goal. A Small and/or Micro- LBE Prime proposer/JV with LBE participation must meet the LBE subconsultant goal. A Small and/or Micro-LBE Prime proposer/JV with LBE participation may not count its participation towards meeting the LBE subconsultant participation goal. Be sure to check box for Rating Bonus. If more space is needed, attach additional copies of this form. This form is also completed and submitted for all contract modifications which exceed the original contract amount by more than 20%.

<b>Contract:</b>	<b>RATING BONUS</b>	
	<input type="checkbox"/> LBE 10%	<input type="checkbox"/> Joint Venture 7.5%
<b>Firm:</b>	<input type="checkbox"/> Joint Venture 5%	<input type="checkbox"/> Joint Venture 10% (LBEs ONLY)
<b>Contact Person:</b>	<input type="checkbox"/> No Rating Bonus Requested	
<b>Address:</b>	LBE Goal      %	
<b>City/ZIP</b>		
<b>Phone</b>		

**\*Type:** Identify if prime (P), JV partner (J), Subconsultant (S), or Vendor (V)

TYPE *	Firm	PORTION OF WORK (describe scope(s) of work)	% OF WORK	INDICATE LBE YES/NO	If an LBE, Identify MBE, WBE, or OBE **	% OF LBE SUBWORK
			%			%
			%			%
			%			%
			%			%
<b>Total % of Work: 100%</b>				<b>Total LBE Subconsulting%</b>		%

I declare, under penalty of perjury under the laws of the State of California, that I am utilizing the above Consultants for the portions of work and amounts as reflected in the Proposal for this Contract.

**Owner/Authorized Representative (Signature):** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Print Name and Title:** \_\_\_\_\_

\*\* MBE = Minority Business Enterprise, WBE = Women Business Enterprise, OBE = Other Business Enterprise. See HRC website [http://sf-hrc.org/ftp/uploadedfiles/sfhumanrights/directory/vlistS\\_1.htm](http://sf-hrc.org/ftp/uploadedfiles/sfhumanrights/directory/vlistS_1.htm) for each firm's status.



**Section 2. Prime Proposer, Joint Venture Partners, Subconsultant, and Vendor Information**

Provide information for each firm listed in Section 1 of this form. Firms which have previously worked on City contracts may already have a vendor number. Vendor numbers of LBE firms are located in the HRC LBE website at [http://sf-hrc.org/ftp/uploadedfiles/sfhumanrights/directory/vlistS\\_1.htm](http://sf-hrc.org/ftp/uploadedfiles/sfhumanrights/directory/vlistS_1.htm). Use additional sheets if necessary.

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____



**FORM 2B: “GOOD FAITH OUTREACH” REQUIREMENTS FORM**

This “Good Faith Outreach” form, along with the required supporting documentation must be completed and submitted per the instructions in this form EVEN IF the LBE subconsulting participation goal has been met (*Section 14B.8 of the San Francisco Administrative Code*). *Proposers* may obtain a list of certified LBEs from the HRC website: <http://mission.sfgov.org/hrc%5Fcertification/>

SECTION A

Under Section 14B.8(B) of the Administrative Code, the good faith outreach exception states that if a proposer demonstrates total LBE participation that exceeds by 35% the established LBE subconsultant participation goal for the project, the proposer is not required to conduct good faith outreach efforts or to submit evidence of good faith outreach efforts. Note that a Small or Micro-LBE prime proposer may count its own Contract Work toward the 35% good faith outreach exception. Please see example in HRC Attachment 2, Section 1.02A.2.

Does your proposal demonstrate that you have exceeded the established LBE subconsultant participation goal by 35% or more in accordance with Section 14B.8(B)?  YES\*  NO

If the answer is yes, please check "YES", above, and complete Section C (if applicable) and Section D of this Form. If the answer is no, please check "NO", above, and complete Sections B and D of this Form, and submit all required supporting documentation in accordance with the instructions in Section B.

\* Note: An answer of "YES", above, is subject to verification by HRC. If the HRC determines that proposer did not exceed the LBE subconsultant participation goal by at least 35% and proposer either failed to undertake adequate good faith outreach efforts or failed to submit supporting documentation with its proposal as required by Section B, items 2 and 4, below, then proposer’s proposal shall be declared non-responsive and **AND INELIGIBLE FOR CONTRACT AWARD.**

**NOTE: “LBE” REFERS TO SMALL AND MICRO-LBES ONLY, UNLESS THE RFP ALLOWS FOR SBA-LBE SUBCONSULTANTS TO COUNT TOWARDS THE LBE PARTICIPATION GOAL.**

SECTION B

All proposers that do not qualify for the good faith outreach exception set forth in Section 14B.8(B) of the Administrative Code must complete this Section B and submit supporting documentation as required.

***A proposer must achieve at least 80 points, as determined by HRC, to be deemed compliant with the “good faith outreach” requirements. A proposer who fails to achieve at least 80 points will be declared non-responsive, and the proposal will be rejected. Please check yes or no for each item listed below.***

<p>1. Did your firm attend the pre-proposal meeting scheduled by the City to inform all proposers of the LBE program requirements for this project? If the City does not hold a pre-proposal meeting, all proposers will receive 15 points.</p>	<p><input type="checkbox"/> Yes (15 Points)</p>	<p><input type="checkbox"/> No (0 Points)</p>
<p>2. Did your firm advertise, not less than 10 calendar days before the due date of the proposal, in one or more daily or weekly newspapers, trade association publications, LBE trade oriented publications, trade journals, or other media, such as: Small Business Exchange, or the Bid and Contracts Section of the Office of Contract Administration’s website (<a href="http://mission.sfgov.org/OCABidPublication/">http://mission.sfgov.org/OCABidPublication/</a>)? If so, <b><u>please enclose a copy of the advertisement.</u></b> <i>The advertisement must provide LBEs with adequate information about the project.</i> If the City gave public notice of the project less than 15 calendar days prior to the proposal due date, no advertisement is required, and all proposers will receive 10 points.</p>	<p><input type="checkbox"/> Yes (10 points)</p>	<p><input type="checkbox"/> No (0 Points)</p>



<p>3. Did your firm identify and select work types (as categorized in HRC’s LBE Directory) to meet the LBE subconsultant participation goal? If so, please identify the work types below:</p> <p>_____</p> <p>_____</p> <p>_____</p>	<input type="checkbox"/> Yes (10 points)	<input type="checkbox"/> No (0 Points)
<p>4. Did your firm contact LBE firms (LBE firms include MBEs, WBEs and OBEs) for the identified work types (see #3 above), not less than 10 calendar days prior to the due date of the proposal? If so, <b><u>please include documentation (i.e. phone logs, emails, faxes, etc.) to verify that contacts were made.</u></b> The purpose of contacting LBE firms is to provide notice of interest in proposing for this project.</p> <p>A proposer who contacts those LBE firms certified in the identified work types, not less than 10 calendar days prior to due date of the proposal, will receive up to 45 points. If a proposer does not comply with paragraphs a. &amp; b. below, one point will be deducted for each LBE firm within each identified work type that is not contacted.</p> <p>a. If there are less than 25 firms within an identified work type, a proposer should contact all of them.</p> <p>b. If there are 25 or more firms within an identified work type, a proposer should notify at least 25 firms within such identified work type.</p> <p>If a proposer does not contact any LBE firms, the proposer will receive no points. When contacting LBEs, you should provide adequate information about the project. If the City gave public notice of the project less than 15 calendar days prior to the proposal due date, the allocation of points above still applies, except that the proposer may contact those LBE firms certified in the identified work types less than 10 calendar days prior to the due date of the proposal.</p>	<input type="checkbox"/> Yes (Up to 45 points)	<input type="checkbox"/> No (0 Points)
<p>5. Did your firm follow-up and negotiate in good faith with interested LBEs? If so, <b><u>please include documentation (i.e. phone logs, emails, faxes, etc.) to verify that follow-up contacts were made.</u></b> If applicable, your follow-up contact with interested LBEs should provide information on the City’s bonding and financial assistance programs. For each interested LBE firm that the proposer does not follow-up with, a point will be deducted.</p> <p>A proposer who does not perform any follow-up contact with interested LBEs will receive no points.</p> <p>**Interested LBE** shall mean an LBE firm that expresses interest in being a subconsultant to the proposer.</p>	<input type="checkbox"/> Yes (Up to 20 points)	<input type="checkbox"/> No (0 Points)
<p>6. A proposer shall submit the following documentation with this form:</p> <ol style="list-style-type: none"> <li>(1) Copies of all written proposals submitted, including those from non-LBEs;</li> <li>(2) If oral proposals were received, a list of all such proposals, including those from non-LBEs. The work type and dollar amounts for each such proposal must be specified; and</li> <li>(3) A full and complete statement of the reasons for selection of the subconsultants for each work type. If the reason is based on relative qualifications, the statement must address the particular qualification at issue.</li> </ol>		



**SECTION C**

If a Small or Micro-LBE prime proposer checks "YES" in Section A, above, and is relying on self-performed Contract Work to meet the 35% good faith efforts outreach exception, such Small or Micro-LBE prime proposer must indicate the total value of Contract Work that proposer will perform with its own forces in the space below:

           % of work

**SECTION D**

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**Contract Name:** \_\_\_\_\_

**Contract No.:** \_\_\_\_\_

**Signature of Owner/Authorized Representative:** \_\_\_\_\_

**Owner/Authorized Representative (Print):** \_\_\_\_\_

**Name of Firm (Print):** \_\_\_\_\_

**Title and Position:** \_\_\_\_\_

**Address, City, ZIP:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

**Date:** \_\_\_\_\_



**FORM 3: HRC NON-DISCRIMINATION AFFIDAVIT**

1. I will ensure that my firm complies fully with the provisions of Chapter 14B of the San Francisco Administrative Code and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
2. Upon request, I will provide the HRC with copies of contracts, subcontract agreements, certified payroll records and other documents requested so the HRC may investigate claims of discrimination or non-compliance with either Chapter 12B or Chapter 14B.
3. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the Human Rights Commission shall be payable to the City and County of San Francisco upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any contract with the City and County of San Francisco.
4. I declare and swear under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

**Signature of Owner/Authorized Representative:** \_\_\_\_\_

**Owner/Authorized Representative (Print)** \_\_\_\_\_

**Name of Firm (Print)** \_\_\_\_\_

**Title and Position** \_\_\_\_\_

**Address, City, ZIP** \_\_\_\_\_

**Federal Employer Identification Number (FEIN):** \_\_\_\_\_

**Date:** \_\_\_\_\_





**FORM 4: HRC JOINT VENTURE FORM**

This form must be submitted ONLY if the proposer is requesting a Joint Venture partnership with an Small and/or Micro-LBE firm for the rating bonus. The Joint Venture partners must submit a joint venture agreement and management plan with the proposal. All work must be accounted for including subconsulting work.

**SECTION 1: GENERAL INFORMATION**

1. Name of Contract or Project:

---

2. Name of all JV partners: (Check LBE if applicable)

	LBE <input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>

3. Attach a copy of Joint Venture Agreement and Management plans.

4. The management plan must include the following information:

- a. Describe in detail how decisions will be made for work distribution and compliance of Small and/or Micro-LBE Joint Venture participation.
- b. Provide each Joint Venture partner’s specific duties and responsibilities (include organizational chart)
- c. Identify the Location of Joint Venture Office.
- d. Provide in detail how decision will be made for work distribution to Small and /or Micro-LBE subconsultants and/or vendors.
- e. Submit copies of bank signature cards with authorized names, titles, and address/city of the bank (required after award of contract.)

5. Calculation of the Rating Bonus. See §2.02D of HRC Attachment 2 for an example.

If the joint venture partners are dividing the work according to a different formula than that described below, please contact HRC staff and describe the arrangement in detail prior to submittal of proposal.

Joint venture partners are encouraged to meet with HRC regarding their joint venture prior to submitting their proposal.

The rating bonus is awarded based on the Small and/or Micro-LBE JV partner tasks calculated as a percentage of the total JV partner tasks.

Step 1. Calculate total JV partner tasks.

Total Contract Tasks	=	100%
Percentage of Total Work to be Performed by Subconsultants	-	%
Percentage of JV partner tasks	=	%



Step 2. Calculate Small and/or Micro-LBE JV partner tasks:

	A	B	C
Description of JV partner Scopes of Work (Specific details of work)	JV Partners' Work as a % of the total project	% of Task by Non-LBE JV Partner	% of Task by Small and/or Micro-LBE JV Partner
	%	%	%
	%	%	%
	%	%	%
	%	%	%
	%	%	%
<b>TOTAL JV %</b>	%	%	%

Step 3. Calculate Small and/or Micro-LBE JV partner work as a percentage of the total JV partner work for the rating bonus.

Total Small and/or Micro-LBE JV Partner %		÷	Total JV %		=	%
---	--	---	------------	--	---	---

---

**JOINT VENTURE PARTNERS MUST SIGN THIS FORM**

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Name and Title (Print)

\_\_\_\_\_  
Name and Title (Print)

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Telephone                      Date

\_\_\_\_\_  
Telephone                      Date



**FORM 5: HRC EMPLOYMENT FORM**

This form is to be submitted with the proposal.

1. Indicate key personnel designated to work on this project for the entire project team (prime proposer, joint venture partners, subconsultants, and vendors).

The employees listed should include all those listed in other sections of the proposal.

NAME OF FIRM	NAME OF EMPLOYEE	PROJECT ROLE	RACE	SEX

Sign below including each joint venture partner.

---

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Name and Title (Print)

\_\_\_\_\_  
Name and Title (Print)

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Telephone                      Date

\_\_\_\_\_  
Telephone                      Date



**FORM 7: HRC PROGRESS PAYMENT FORM**

To be completed by Consultant and submitted to the Contract Awarding Authority and HRC with its monthly progress payment application (transmit to the following):

**TRANSMITTAL**

TO: Project Manager/Designee                      COPY TO: HRC Contract Compliance Officer  
Firm: \_\_\_\_\_    Date: \_\_\_\_\_

**SECTION 1. Fill in all the blanks**

Contract Number: \_\_\_\_\_ Contract Name: \_\_\_\_\_  
Reporting Period From: \_\_\_\_\_ To: \_\_\_\_\_ Progress Payment No: \_\_\_\_\_

The information submitted on Sections 1 and 2 of this form must be cumulative for the entire contract as opposed to individual task orders. Additionally, the information submitted on Sections 1 and 2 of this form must be consistent. See next page for Section 2.

1. Original Contract Award Amount:	\$
2. Amount of Amendments and Modifications to Date:	\$
3. Total Contract to Date including Amendments and Modifications (Line 1 + Line 2):	\$
4. Sub-total Amount Invoiced this submittal period: Professional Fees	\$
5. Sub-total Amount Invoiced this submittal period: Reimbursable Expenses	\$
6. Gross Amount Invoiced this submittal period (Line 4 + Line 5):	\$
7. All Previous Gross Amounts Invoiced:	\$
8. Total Gross Amounts of Progress Payments Invoiced to Date (Line 6 + Line 7):	\$
9. Percent Completed (Line 8 ÷ Line 3):	%

Consultant, including each joint venture partner, must sign this form.

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title (Print)

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Telephone                      Fax

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title (Print)

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Telephone                      Fax

\_\_\_\_\_  
Date



**SECTION 2.** For column “A”, list the Prime Consultant, each joint venture partner and ALL subconsultants and vendors including 2<sup>nd</sup> and 3<sup>rd</sup> tier subconsultants. Make copies if more space is needed. Attach copies of all invoices from primes/subconsultants supporting the information tabulated for this progress payment.

- Notes:** 1) ALL firms must be CONTINUOUSLY listed on column “A” regardless if a firm is not requesting payment and  
2) Failure to submit all required information may lead to partial withholding of progress or final payment.

Identify LBE Goal of this contract:                      %

A	B	C	D	E	F	G	H
Name of Firm. List prime consultant, including each JV partner, and all subconsultants including lower tier LBEs. Indicate if the firm is an LBE.	Service Performed	Amount of Contract or Purchase Order at Time of Award	Amount of Modifications to Date	Total Amount of Contract or Purchase Order to Date +/- Modifications (C + D) or (C-D)	Amount Invoiced this Reporting Period	Amount Invoiced to Date, including Amount Invoiced this Reporting Period (F).	Percent Complete to Date (G÷E)
							%
							%
							%
							%
							%
							%
							%
<b>LBE Sub-Totals</b>							%
<b>Professional Fees</b>							
<b>Reimbursable Expenses</b>							%
<b>CONTRACT TOTALS</b>							%



**FORM 9: HRC PAYMENT AFFIDAVIT**

Consultant or Joint Venture partners must submit this form to the Contract Awarding Authority and HRC within ten (10) working days following receipt of each progress payment from the Contract Awarding Authority. This form must be submitted EVEN if there is no sub payment of this reporting period and until completion of the contract.

TO: Project Manager/Designee

COPY TO: HRC Contract Compliance Officer

Firm: \_\_\_\_\_

Date: \_\_\_\_\_

List the following information for each progress payment received from the Contract Awarding Authority. Use additional sheets to include complete payment information for all subconsultants and vendors (including lower tiers utilized on this Contract. Failure to submit all required information may lead to partial withholding of progress payment.

Contract Number: \_\_\_\_\_ Contract Name: \_\_\_\_\_

Contract Awarding Department: \_\_\_\_\_

Progress Payment No.: \_\_\_\_\_ Period Ending: \_\_\_\_\_

Amount Received: \$ \_\_\_\_\_ Date: \_\_\_\_\_ Warrant/Check No.: \_\_\_\_\_

Check box and sign below if there is no sub payment for this reporting period.

Subconsultant/Vendor Name	Business Address	Amount Paid	Payment Date	Check Number
		\$		
		\$		
		\$		
		\$		
		\$		
		\$		

I/We declare, under penalty of perjury under the laws of the State of California that the above information is complete, that the tabulated amounts paid to date are accurate and correct.

Prime consultant, including each joint venture partner, must sign this form (use additional sheets if necessary)

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Name (Print)                      Title

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Telephone                              Date

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Name (Print)                              Title

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Telephone                              Date



**FORM 8: HRC EXIT REPORT AND AFFIDAVIT**

Prime Consultant must complete and sign this form (Sections 1 and 4) for each LBE subconsultant (incl. lower tier LBEs). All LBEs must complete and sign Sections 2 and 3 of this form. These forms should be submitted to the Contract Awarding Authority with the final progress payment request.

**TRANSMITTAL**

TO: Project Manager/Designee COPY: HRC Contract Compliance Officer  
FROM (Consultant): \_\_\_\_\_ Date Transmitted: \_\_\_\_\_

**SECTION 1. Please check this box if there are no LBE subconsultants for this contract:**

Reporting Date: \_\_\_\_\_ Contract Name: \_\_\_\_\_  
Name of LBE: \_\_\_\_\_ Portion of Work (Trade): \_\_\_\_\_  
Original LBE Contract Amount: \$ \_\_\_\_\_  
Change Orders, Amendments, Modifications \$ \_\_\_\_\_  
Final LBE Contract Amount: \$ \_\_\_\_\_  
Amount of Progress Payments Paid to Date: \$ \_\_\_\_\_  
Amount Owning including all Change Orders, Amendments and Modifications \$ \_\_\_\_\_

Explanation by Consultant if the final contract amount for this LBE is less than the original contract amount:

**SECTION 2. Please check one:**

- I did NOT subcontract out ANY portion of our work to another subcontractor.
- I DID subcontract out our work to:

Name of Firm: \_\_\_\_\_ Amount Subcontracted: \$ \_\_\_\_\_  
Name of Firm: \_\_\_\_\_ Amount Subcontracted: \$ \_\_\_\_\_

**SECTION 3.**

To be signed by the LBE Subconsultant or vendor:

- I agree  I disagree

Explanation by LBE if it is in disagreement with the above explanation, or with the information on this form. LBE must complete this section within 5 business days after it has received it from the Prime. It is the LBE's responsibility to address any discrepancies within 5 business days concerning the final amount owed. If the LBE fails to submit the form within 5 business days, the Prime will note this on the form and submit the form as is with the final progress payment:

Owner/Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone

Date



---

**SECTION 4.**

If this form is submitted without the LBE's signature, the Prime must enclose verification of delivery of this form to the subconsultant.

I declare, under penalty of perjury under the laws of the State of California, that the information contained in Section 1 of this form is complete, that the tabulated amounts paid to date are accurate and correct, and that the tabulated amounts owing will be paid within three (3) days after receipt of the City's final payment under the Contract.

---

Owner/Authorized Representative (Signature)

---

Name and Title (Print)

---

Firm Name

---

Telephone

Date





**FORM 10: HRC CONTRACT MODIFICATION FORM**

Consultant must submit this form with the required supporting documentation when processing amendments, modifications or change orders that cumulatively increase the original contract amount by more than 20%, and then for all subsequent amendments, modifications or change orders. This form must be completed prior to the approval of such amendments, modifications or change orders. (This provision applies only to contracts originally valued at \$50,000 or more).

Name of Project/Contract Title: \_\_\_\_\_

Original Contract Amount: \_\_\_\_\_

Contract Amount as Modified to Date: \_\_\_\_\_

Amount of Current Modification Request: \_\_\_\_\_

**REQUIRED ATTACHMENTS:**

1. Revised Form 2A reflecting the new overall contract amounts for the prime consultant, joint venture partners, subconsultants, and vendors.
2. A list of all prior contract amendments, modifications, supplements and/or change orders leading up to this modification, including those leading up to the amendment which increased the original contract amount by more than 20%.
3. A spreadsheet showing each firm's participation for the overall contract, including each firm's participation to date and proposed participation under the modification.
4. A brief description of the work to be performed under this amendment, modification, or change order.



\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Name (Print) Title

\_\_\_\_\_  
Name (Print) Title

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Telephone Date

\_\_\_\_\_  
Telephone Date

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## **APPENDIX D: DECLARATION AND CERTIFICATION FORMS**

1. Prime Consultant or Joint Venture Lead Partner (as applicable) must complete the following forms and submit on a separate sealed envelope.
  - *Certification of Proposer Regarding Debarment and Suspension Form*
  - *Minimum Compensation Ordinance Declaration Form*
  - *Health Care Accountability Ordinance Declaration Form*
  - *Non-Construction First Source Employer's Projection of Entry Level Positions Form*
  - *Chapter 12B Compliance Certification Form (Note: Each JV firm, if applicable, must be 12B compliant)*
  
2. All subconsultants must complete the following form and include in the same envelope as above:
  - *Minimum Compensation Ordinance Declaration Form*
  - *Health Care Accountability Ordinance Declaration Form*
  - *Certification of Subcontractor, Lower-Tier Subcontractor or Supplier Regarding Debarment and Suspension Form*
  
3. Submit digital copies of above items as separate PDF files on a Compact Disc **(CD)**.

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**CERTIFICATION OF PROPOSER REGARDING DEBARMENT AND SUSPENSION\***

I, \_\_\_\_\_, by affixing my signature hereto, under penalty of perjury, hereby certify that, except as noted below, that my principals and I:

1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a government agency;
2. have not within a 3-year period preceding this Proposal been convicted of or had a civil judgment rendered against us for: (i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; (ii) violation of federal or state antitrust statutes; or (iii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in item 2 above; and
4. have not within a 3-year period preceding this Proposal had one or more public transactions (federal, state or local) terminated for cause or default.
5. Where the Proposer is unable to certify to any of the statements in this certification because it currently violates or has previously violated the above conditions 1 to 4, such prospective participant shall provide a description of each instance of violation and attach an explanation to this Proposal. The Proposer declares the following exceptions to the above representations: *(If there are exceptions to this Certification, insert the exceptions in the space provided below.)*

---

Exceptions will not necessarily result in denial of award of the Contract, but will be considered in determining Proposer responsibility. For each exception noted above, Proposer shall indicate below to whom it applies, name of the government entity and dates of action:

<u>Exception</u>	<u>Person</u>	<u>Government Entity</u>	<u>Dates Inclusive</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

\_\_\_\_\_  
Proposer's Name

\_\_\_\_\_  
Name and Title of Signer

\_\_\_\_\_  
Proposer's Street Address

\_\_\_\_\_  
Proposer's City, State, ZIP

\_\_\_\_\_  
Signature of Proposer or Authorized Representative

\_\_\_\_\_  
Proposer's Telephone No.

\_\_\_\_\_  
Date

NOTICE: Providing false information may result in criminal prosecution or administrative sanctions.  
\*Fulfills requirements of Title 49, CFR, Part 29

GENERAL SERVICES AGENCY  
OFFICE OF LABOR STANDARDS ENFORCEMENT  
DONNA LEVITT, MANAGER



## Minimum Compensation Ordinance (MCO) Declaration

**What the Ordinance does.** The Minimum Compensation Ordinance (MCO) became effective October 8, 2000, and was later amended by the Board of Supervisors, with an effective date for the amendments of October 14, 2007. The MCO requires City contractors and subcontractors to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated (12 days per year or cash equivalent) and uncompensated time off (10 days per year). The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements.

The MCO applies only if you have at least \$25,000 in cumulative annual business with a City department or departments and have more than 5 employees, including employees of any parent, subsidiaries and subcontractors.

The City may require contractors to submit reports on the number of employees affected by the MCO.

**Effect on City contracting.** For contracts and amendments signed on or after October 8, 2000 the MCO will have the following effect:

- In each contract, the contractor will agree to abide by the MCO and to provide its employees the minimum benefits the MCO requires, and to require its subcontractors subject to MCO to do the same.
- If a contractor does not agree to provide the MCO's minimum benefits, the City will award a contract to that contractor **only** if the contractor has received an approved exemption or waiver under MCO from the Office of Labor Standards Enforcement (OLSE) through the contracting Department. The contract will not contain the agreement to abide by the MCO if there is an exemption or waiver on file.

**What this form does.** If you can assure the City now that, beginning with the first City contract or amendment you receive after October 8, 2000 and until further notice, you will provide the minimum benefit levels specified in the MCO to your covered employees, and will ensure that your subcontractors also subject to the MCO do the same, this will help the City's contracting process.

If you cannot make this assurance now, please do not return this form.

**For more information,** (1) see our Website, including the complete text of the ordinance: [www.sfgov.org/olse](http://www.sfgov.org/olse), (2) e-mail us at: [MCO@sfgov.org](mailto:MCO@sfgov.org), (3) Phone us at (415) 554-6292.

**Where to Send this Form.** Mail: Vendor File Support, City Hall, Room 484, San Francisco CA 94102. Fax: (415) 554-6261 Email: [vendor.file.support@sfgov.org](mailto:vendor.file.support@sfgov.org)

### Declaration

In order to be a certified vendor with the City and County of San Francisco, this company will provide, if applicable, the minimum benefit levels specified in the MCO to our Covered Employees, and will ensure that our subcontractors also subject to the MCO do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
City Vendor Number (if known)

\_\_\_\_\_  
Company Name

( ) \_\_\_\_\_  
Phone

\_\_\_\_\_  
Federal Employer ID #

GENERAL SERVICES AGENCY  
OFFICE OF LABOR STANDARDS ENFORCEMENT  
DONNA LEVITT, MANAGER



## Health Care Accountability Ordinance (HCAO) Declaration

**What the Ordinance Requires.** The Health Care Accountability Ordinance (HCAO), which became effective July 1, 2001, requires Contractors that provide services to the City or enter into certain leases with the City, and certain Subcontractors, Subtenants and parties providing services to Tenants and Subtenants on City property, to provide health plan benefits to Covered Employees, or make payments to the City for use by the Department of Public Health (DPH), or, under limited circumstances, make payments directly to Employees.

The HCAO applies only to Contractors with at least \$25,000 (\$50,000 for non-profit organizations) in cumulative annual business with a City department(s) and have more than 20 Employees (50 Employees for non-profit organizations) including Employees of any parent, subsidiaries and subcontractors.

The City may require Contractors to submit reports on the number of Employees affected by the HCAO.

**Effect on City Contracting.** For contracts and amendments signed on or after July 1, 2001, the HCAO requires the following:

- Each contract must include terms ensuring that the Contractor will agree to abide by the HCAO and either to provide its employees with health plan benefits meeting the Minimum Standards set forth by the Director of Health or to make the payments required by the HCAO;
- All City Contractors must agree to comply with the requirements of the HCAO unless the Contracting Department has obtained an approved exemption or waiver under the HCAO from the Office of Labor Standards (OLSE).
- Contractors must require any Subcontractors subject to the HCAO to comply with the HCAO:

**The Purpose of This Declaration.** By submitting this declaration, you are providing assurances to the City that, beginning with the first City contract or amendment you receive after July 1, 2001 and until further notice, you will either provide the health plan benefits meeting the Minimum Standards to your covered employees or make the payments required by the HCAO, and will ensure that your Subcontractors also abide by these requirements. **If you cannot provide this assurance, do not return this form.**

**To obtain more information regarding the HCAO,** Visit our website, which includes links to the complete text of the HCAO, at [www.sfgov.org/olse/hcao](http://www.sfgov.org/olse/hcao); send an e-mail to [HCAO@sfgov.org](mailto:HCAO@sfgov.org); or call (415) 554-6237.

**Where to Send this Form.** Mail: Vendor File Support, City Hall, Room 484, San Francisco CA 94102. Fax: (415) 554-6261 Email: [vendor.file.support@sfgov.org](mailto:vendor.file.support@sfgov.org)

### Declaration

In order to be a certified vendor with the City and County of San Francisco, the company named below will either provide, if applicable, health benefits specified in the HCAO to our covered employees or make the payments required by the HCAO, and will ensure that our subcontractors that are subject to the HCAO also comply with these requirements, until further notice. The company named below will provide such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
City Vendor Number (if known)

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Phone ( )

\_\_\_\_\_  
Federal Employer ID #



Edwin M. Lee, Mayor

Office of Economic and Workforce Development  
Workforce Development Division

**NON-CONSTRUCTION FIRST SOURCE EMPLOYER'S PROJECTION OF ENTRY LEVEL POSITIONS**

By signing this form, employers agree to participate in the San Francisco Workforce Development System established by the City and County of San Francisco, and comply with the provisions of the First Source Hiring Program pursuant to Chapter 83 of the San Francisco Administrative Code. As an indication of good faith efforts to comply with First Source, the Employer must fill out this form at commencement of contract/tax year to indicate:

- For a Tenant/Sub-tenant, the number of **Entry Level Positions** in the company that are currently filled and those that are currently available on premises leased by the City of San Francisco.
- For the successful Developer, Contractor, or Subcontractor, **Entry Level Positions** that are currently filled and those that will be available during construction work.
- For a tenant of a private commercial project that falls under Chapter 83 provisions of the City Administrative Code, the number of **Entry Level Positions** that are currently filled and those that will be available within the lease holding business at project address.
- For companies applying for the Biotech Payroll Tax Exclusion, the number of **Entry Level Positions** that are currently filled and those that will be available in the current tax year.
- For a successful organization awarded a City contract in excess of \$50,000, the number of **Entry Level Positions** that are currently filled and those that will be available within the business or non-profit organization.
- If positions listed are subject to collective bargaining agreements.

**Note: If an Entry Level Position becomes available during the term of the lease and/or contract, Employer must notify the First Source Hiring Administration. For information regarding First Source requirements contact: Tiffany Garcia (415) 581-2322**

**Entry Level Position means a non-managerial position that requires either no education above a high school diploma or certified equivalency, or less than two (2) years of training or specific preparation. Apprenticeship positions should be included.**

Type of Employer (check one):

- |                                     |  |
|-------------------------------------|--|
| <input type="checkbox"/> Tenant     | <input type="checkbox"/> Subtenant                               |
| <input type="checkbox"/> Developer  | <input type="checkbox"/> Biotech Payroll Tax Exclusion applicant |
| <input type="checkbox"/> Contractor | <input type="checkbox"/> Subcontractor                           |

Identify Project or Construction Project (if applicable):

City Department (if Contract or Lease):

Name of Employer:

Contact Person:

Street Address:

City:

State:

Zip:

Telephone:

Fax:

Email:

\_\_\_\_\_  
Name of authorized employer representative

\_\_\_\_\_  
Date

Entry-Level Position Title	Number Currently Filled	Number Currently Available	Number Projected to Become Available in the next 12 Months	Estimated Date of Next Available Position	Subject to Collective Bargaining? (Yes/No)

Please fax, email, or mail this form SIGNED to:

(415) 581-2322  
Attn: Tiffany Garcia  
First Source Compliance  
50 Van Ness Ave  
San Francisco, CA 94102  
Tiffany.garcia@sfgov.org





## CHAPTER 12B COMPLIANCE CERTIFICATION

Proposer hereby acknowledges that Proposer has read and will comply with chapter 12B "Nondiscrimination in Contracts" of the San Francisco Administrative Code and attests to the following (please **check** the applicable box):

- CERTIFIED:** The San Francisco Human Rights Commission ("HRC") has certified that Proposer is in compliance with chapter 12B of the San Francisco Administrative Code, and all applicable related requirements as specified in the Contract Documents, and the certification is in effect on the date of RFQ submittal.
- CERTIFICATION PENDING:** Proposer has submitted Form HRC-12B-101 and all required documentation to the HRC seeking certification of compliance with chapter 12B, and determination of compliance is pending review by the HRC. Proposer agrees to resolve all non-compliance through conciliation with HRC as a condition precedent to award of the Contract. If the HRC determines that Proposer is non-compliant, Proposer's Proposal shall be deemed non-responsive.
- NOT CERTIFIED:** Proposer acknowledges that full compliance with chapter 12B of the San Francisco Administrative Code is a condition precedent for award of the Contract, and if determined to be one of the highest ranking Firms, Proposer will submit Form HRC-12B-101 and all required documentation within 10 working days after the date of announcement of final ranking results. If the HRC determines that Proposer is non-compliant, Proposer's Proposal shall be deemed non-responsive.

---

 Proposer 's Name

---

 Name and Title of Signer

---

 Proposer 's Street Address

---

 Proposer 's City, State, ZIP

---

 Proposer 's Telephone No.

---

 Signature of Proposer or Authorized Representative

---

 Date

Note: The text chapter 12B of the San Francisco Administrative Code and Form HRC-12B-101 is available from the HRC, 25 Van Ness Avenue, Suite 800, San Francisco 94102-6033, telephone (415) 252-2500 and posted on the Web at <http://www.sfgov.org/site/sfhumanrights>. Proposers are advised to submit Form HRC-12B-101 and accompanying documentation to the HRC at the earliest possible opportunity so as to avoid inability to gather all required documentation during the 10 day period after announcement of final ranking results.

**CERTIFICATION OF SUBCONTRACTOR, LOWER-TIER SUBCONTRACTOR OR SUPPLIER  
REGARDING DEBARMENT AND SUSPENSION\***

I, \_\_\_\_\_, by affixing my signature hereto, under penalty of perjury, hereby certify that, except as noted below, that my principals and I are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any government agency.

Where the subcontractor, lower-tier subcontractor or supplier is unable to certify to any of the statements in this certification because it currently violates or has previously violated the above conditions of the certification, such subcontractor, lower-tier subcontractor or supplier shall provide description of each instance of violation and attach an explanation to this Document. The subcontractor, lower-tier subcontractor or supplier declares the following exceptions to the above representations: *(If there are exceptions to this Certification, insert the exceptions in the space provided below.)*

---



---



---

Exceptions will not necessarily result in denial of award of the Contract, but will be considered in determining Proposer responsibility. For each exception noted above, indicate below to whom it applies, name of the government entity and dates of action:

<u>Exception</u>	<u>Person</u>	<u>Government Entity</u>	<u>Dates Inclusive</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

\_\_\_\_\_  
Proposer's Name

\_\_\_\_\_  
Name and Title of Signer

\_\_\_\_\_  
Proposer's Street Address

\_\_\_\_\_  
Proposer's City, State, ZIP

\_\_\_\_\_  
Signature of Proposer or Authorized Representative

\_\_\_\_\_  
Proposer's Telephone No.

\_\_\_\_\_  
Date

**NOTICE:** Providing false information may result in criminal prosecution or administrative sanctions.

*\*Fulfills requirements of Title 49, CFR, Part 29 (applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more)*

**APPENDIX E: MASTER AGREEMENT SAMPLE**

**(FOR REFERENCE ONLY)**

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**City and County of San Francisco  
Department of Public Works  
875 Stevenson Street, Room 420  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
[CONSULTANT NAME]**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2012, in the City and County of San Francisco, State of California, by and between: \_\_\_\_\_, 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 Public Works, hereinafter referred to as "Director"

**Recitals**

WHEREAS, the **Department of Public Works** ("Department") wishes to provide ;land surveying servicesand issued an award of contract DPW Order # \_ dated effective \_; and,

WHEREAS, a Request for Proposal ("RFP") was issued on \_\_\_\_\_, 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 \_\_\_\_\_ on \_\_\_\_\_,

Now, THEREFORE, the parties agree as follows:

**Definitions**

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement and Specifications, it shall have the meaning herein set forth.

**AUTHORIZATION** Contract Order of the City and County of San Francisco properly executed by the Director, Director of Purchasing, and Director of Administrative Services, and certified by the Controller for the specific funding of this Agreement or any modification thereof.

**CITY ADMINISTRATOR** City Administrator of the City and County of San Francisco.

**CITY** City and County of San Francisco, a municipal corporation.

**CONTRACTOR** [CONSULTANT NAME]

CONTROLLER	Controller of the City and County of San Francisco.
CSO	Contract Service Order authorizing and directing work to be performed under this Master Agreement, issued at the City's sole discretion.
DIRECTOR	Director of Public Works of the City and County of San Francisco.
WORK	The work to be done in providing the services under a CSO as described and specified in Appendix A.

**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 the date of date of award, XXXXXXXX to XXXXXXXXXXXX, only for CSOs authorized and certified by XXXXXXXX.

**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 generally provided for in Appendix A “Description of Services,” attached hereto and incorporated by reference as though fully set forth herein. Contractor acknowledges and agrees that this Agreement does not guarantee Contractor any work.

For the performance of specific tasks, the Department shall issue a Contract Service Order (CSO). All CSOs shall be issued within the first three (3) years from the date of award.

The Contractor acknowledges and agrees that once the Department issues a CSO under this Agreement, the scope of work, time for completion and price, as set forth in the CSO shall be binding on Contractor as though fully incorporated into this Agreement.

## 5. Compensation

The City shall compensate the Contractor only for those services performed under authorized CSOs. The Contractor acknowledges and agrees that no minimum compensation is assured under this Agreement.

Compensation shall be made in monthly payments on or before the last day day of each month for work, as set forth in Section 4 of this Agreement, that the Director of Public Works, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed \$1,500,000.00 (ONE MILLION FIVE HUNDRED THOUSAND DOLLARS). 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 the **Department of Public Works** 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. Left blank by agreement of the parties. (Disallowance)**

**10. Taxes**

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

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

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

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

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

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



**11. Payment Does Not Imply Acceptance of Work**

The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

**12. Qualified Personnel**

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

**13. Responsibility for Equipment**

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

**14. Independent Contractor; Payment of Taxes and Other Expenses**

**a. Independent Contractor**

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

**b. Payment of Taxes and Other Expenses.**

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an

employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

## 15. Insurance

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

- 1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- 2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence, \$2,000,000 aggregate, Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- 3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- 4) 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:

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

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

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

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

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

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

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

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

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

## 16. Indemnification

a. **General.** To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

b. **Limitations.** No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

c. **Copyright infringement.** Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Contractor's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

**17. Incidental and Consequential Damages**

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

**18. Liability of City**

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

**19. Left blank by agreement of the parties. (Liquidated Damages)**

**20. Default; Remedies.**

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

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

- |   |                                       |
|---|---------------------------------------|
| 8. Submitting False Claims; Monetary Penalties.     | 37. Drug-free workplace policy        |
| 10. Taxes   | 53. Compliance with laws              |
| 15. Insurance                                       | 55. Supervision of minors             |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment                                      | 58. Graffiti removal                  |

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

3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar

powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

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

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

## 21. Termination for Convenience

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

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

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

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

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

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

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

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

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

## **22. Rights and Duties upon Termination or Expiration**

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

- 8. Submitting false claims
- 9. Disallowance
- 10. Taxes
- 11. Payment does not imply acceptance of work
- 13. Responsibility for equipment
- 14. Independent Contractor; Payment of Taxes and Other Expenses
- 15. Insurance
- 16. Indemnification
- 17. Incidental and Consequential Damages
- 18. Liability of City
- 24. Proprietary or confidential information of City
- 26. Ownership of Results
- 27. Works for Hire
- 28. Audit and Inspection of Records
- 48. Modification of Agreement.
- 49. Administrative Remedy for Agreement Interpretation.
- 50. Agreement Made in California; Venue
- 51. Construction
- 52. Entire Agreement
- 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: Department of Public Works  
 Division of Contract Administration  
 875 Stevenson Street, Room 420

San Francisco, CA 94103

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**

1) **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.

2) **Subcontracting Goals**

The LBE subcontracting participation goal for this contract is **21%**. 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.

3) **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.

4) **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](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

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

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

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

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

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

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

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

- i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.
- k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
- m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

#### **45. First Source Hiring Program**

##### **a. Incorporation of Administrative Code Provisions by Reference.**

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

##### **b. First Source Hiring Agreement.**

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

- 1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.
- 2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing



requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

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

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

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

6) Set the term of the requirements.

7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

**c. Hiring Decisions**

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

**d. Exceptions**

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

**e. Liquidated Damages.**

Contractor agrees:

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

- 5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:
  - a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and
  - b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

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

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

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

f. **Subcontracts.**

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

**46. Prohibition on Political Activity with City Funds**

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

**47. Preservative-treated Wood Containing Arsenic**

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

**48. Modification of Agreement**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. 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. Left blank by agreement of the parties. (Slavery Era Disclosure)**

**61. Electronic Contract Service Order Approval Processing**

Contract Service Order (CSO) awards and modifications will be processed and approved electronically utilizing the Microsoft SharePoint© software. Participating contractors and consultants agree to execute CSOs electronically after, 1) executing a Confidentiality Agreement provided by the City on behalf of its company, 2) having all authorized company representatives that will execute CSOs complete training on using this electronic approval system (training to be provided by the City at no expense to contractors and consultants), and 3) submitting a completed executed User Access Setup form for each company representative using the electronic CSO approval system. Contractors and consultants shall also agree to immediately notify the City of any changes to authorized users of this CSO approval system.

**62. Automated Clearing House (ACH) “electronic” payments**

The City will issue payments to Contractor through the City's electronic payment system called PayMode-X®. Contractor acknowledges and agrees to receive payment electronically through this system. Contractor shall not be entitled to any additional cost or charge under this Contract for using or failing to use the electronic payment system. Nor shall Contractor be entitled to any additional cost or charge for delays or failures of the electronic payment system to complete a payment transaction.

**63. 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.

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

**CITY**

**CONTRACTOR**

Recommended by:

\_\_\_\_\_  
Contract Manager

\_\_\_\_\_  
Division Manager

\_\_\_\_\_  
Deputy Director

Approved:

\_\_\_\_\_  
Mohammed Nuru  
Director of Public Works

Approved as to Form:  
**Dennis J. Herrera**  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

I have read and understood Sec. 31, 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: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Title

\_\_\_\_\_  
Area Code Phone Number

\_\_\_\_\_  
Federal Employer Number

**Appendices**

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

## Appendix A Services to be provided by Contractor

### 1. Description of Services

- A. The Consultant, with its team of subconsultants, shall provide services for the following Mechanical/Electrical Engineering related work. The services will include, but not be limited to, preparation of:
1. Electrical Engineering. The Consultant shall provide services for the following Electrical Engineering related work:
    - a. Electrical power distribution and interior lighting design for commercial type buildings.
    - b. Building fire alarm and security systems, including video surveillance systems and networks
    - c. Water and wastewater plant process improvements.
    - d. Electrical Power System Design for Water and Wastewater Facilities including low and Medium Voltage Power Distribution and Motor Controls.
    - e. Water and Wastewater Facility As-Built Verification and Production of Record Drawing.
    - f. Power system short circuit analysis and coordination studies including system reliability.
    - g. Instrumentation and control (I&C) system design including in-plant/remote wireless communication and controls and modification of existing DCS/SCADA, systems.
    - h. Energy efficiency studies including energy audits.
    - i. Field startup and commissioning of water and wastewater facilities.
  2. Mechanical Engineering. The Consultant shall provide services for the following Mechanical Engineering related work:
    - a. Design of sewage treatment plants, pump stations, water treatment plants, compressed natural gas (CNG) filling systems, and related facilities.
    - b. Design of heating, ventilation, and air conditioning (HVAC) systems; plumbing systems, emergency generators systems, and auxiliary water supply systems (AWSS).
    - c. Surge analysis for pumping stations.
  3. Construction Support: Consulting services and field visits may extend into the construction phase of a project including responding to RFIs and design changes.
  4. Cost Estimating: Consultant may be asked to provide cost estimates for various types of projects.
  5. Quality Control/Quality Assurance (QA/QC) Review: This type of work may require Consultant to provide QA/QC reviews of construction documents of certain City projects. The goal of the review is to ensure that projects under design by the City or other Consultants adhere to industry standards and applicable codes. Consultants will be required to provide written comments and recommendations as deliverables under this work.
- B. Consultant, by executing this agreement, understands that the policy of the Department of Public Works is to create subcontracting opportunities for HRC certified Local Business Enterprises whenever possible and it agrees that it shall maximize its efforts to meet and/or exceed the subcontracting participation goals established for this contract.



## 2. Reports

Consultant shall submit written reports as requested by the Department of Public Works. Format for the content of such reports shall be determined by the Department of Public Works. 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 **Department of Public Works** will be Severino (Jun) Caranto, Jr. Contractor shall submit all Contract Service Order Proposals and Invoices to Jun Caranto by email at: [severino.caranto@sfdpw.org](mailto:severino.caranto@sfdpw.org)

DRAFT

**Appendix B  
Calculation of Charges**

<u>Services</u>	<u>Rates/Schedule</u>
Sub-consultant Work	Cost plus 5% (for a maximum of two tiers of sub-consultants work)
Meal expenses	Not reimbursable without prior agreement.
Lodging	Not reimbursable without prior agreement.
Air/taxi/shuttle/rail fares	Not reimbursable without prior agreement.
Other Direct Costs	At cost.
Travel	The Internal Revenue Service (IRS) standard mileage rate for business use of an automobile. No markup applies. This rate is subject to change, yearly. Travel expenses will be reimbursed only when work locations are outside of San Francisco and only with prior approval. Expenses associated with travel to and from Consultant or all levels of Sub Consultant's offices located outside San Francisco to and from work sites within San Francisco are not reimbursable.
Equipment Rental	Compensation shall be paid for at the rates listed in Labor Surcharge and Equipment Rental Rates issues by the State of California, Business Transportation, and Housing Agency, Department of Transportation (Caltrans) Construction Program, plus 5%.
Overtime Rate = Fully Burden Staff Billing Rates x 1.5	

Non-Reimbursable Items

The following shall apply and remain in effect throughout the term of the contract for both the Consultant and all levels of sub consultants:

- A. The City will not approve payment of ancillary charges. These items are considered part of work to perform the job. These costs are considered to be included in the billable staff rate. These costs include, but are not limited to:

Blackberries	Cameras	Cellphones, calls, faxes	Computers
Normal Office Copies	First aid kits	iPhones	Office equipment
Office supplies	PDA's	Photocopiers	Respirators
Safety equipment	Telephones, calls	Tools	

Services and Charges

The approved billing rates, as shown in the following pages, shall apply for all services, and remain in effect throughout the term of the contract for both the Consultant and all levels of subconsultants.

DRAFT

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## **APPENDIX F: OTHER FORMS**

The following form must be completed, if needed, and refer to the attached Quick Reference Guide:

- HRC 12B-101 FORM
- QUICK REFERENCE GUIDE TO EQUAL BENEFITS COMPLIANCE

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# CITY AND COUNTY OF SAN FRANCISCO HUMAN RIGHTS COMMISSION

## S.F. ADMINISTRATIVE CODE CHAPTERS 12B & 12C DECLARATION: NONDISCRIMINATION IN CONTRACTS AND BENEFITS (HRC-12B-101)

### ► Section 1. Vendor Information

DATE & TIME RECEIVED BY HRC  
(FOR HRC USE ONLY)

Name of Company: \_\_\_\_\_

Name of Company Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_ Ext.: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Vendor Number (if known): \_\_\_\_\_

Federal ID or Social Security Number: \_\_\_\_\_

Approximate Number of Employees in the U.S.: \_\_\_\_\_

Are any of your employees covered by a collective bargaining agreement or union trust fund?  Yes  No

Union name(s): \_\_\_\_\_

### ► Section 2. Compliance Questions

#### Question 1. Nondiscrimination – Protected Classes

A. Does your company agree it will not discriminate against its employees, applicants for employment, employees of the City, or members of the public on the basis of the fact or perception of a person's membership in the categories listed below? **Please note:** a "YES" answer is required for compliance. Please answer yes or no to each category.

- |                   |                              |                             |  |                              |                             |
|-------------------|------------------------------|-----------------------------|--|------------------------------|-----------------------------|
| • Race            | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Sex                                  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Color           | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Sexual orientation                   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Creed           | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Gender identity (transgender status) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Religion        | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Domestic partner status              | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • National origin | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Marital status                       | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Ancestry        | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Disability                           | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Age             | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • AIDS/HIV status                      | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Height          | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Weight                               | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

B. Does your company agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract you have with the City? **Please note:** you must answer this question even if you do not intend to enter into any subcontracts.

Yes  No

#### Question 2. Nondiscrimination – Equal Benefits for Employees with Spouses and Employees with Domestic Partners

A. Does your company provide or offer access to any benefits to employees with spouses or to spouses of employees?

Yes  No

B. Does your company provide or offer access to any benefits to employees with (same or opposite sex) domestic partners\* or to domestic partners of employees?

Yes  No

Questions 2A and 2B should be answered YES even if your employees pay some or all of the cost of spousal or domestic partner benefits.

\*The term "Domestic Partner" includes both same-sex and opposite-sex couples who have registered with any state or local government domestic partnership registry. See S.F. Admin. Code Ch. 12B.1(c).

**If you answered "NO" to both** Questions 2A and 2B, go to Section 4, complete and sign the form, filling in all items requested.

**If you answered "YES" to either** or both Questions 2A and 2B, please continue to Question 2C.

(OVER)

**Question 2. (continued)**

C. Please check all benefits that apply to your answers above and list in the “other” section any additional benefits not already specified. Note: some benefits are provided to employees because they have a spouse or domestic partner, such as bereavement leave; other benefits are provided directly to the spouse or domestic partner, such as medical insurance.

BENEFIT	Yes for Employees with Spouses	Yes for Employees with Domestic Partners	No, this Benefit is Not Offered	Documentation of this Benefit is Submitted with this Form
• Health Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Dental Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Vision Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Retirement (Pension, 401(k), etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Bereavement Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Family Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Parental Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Employee Assistance Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Relocation & Travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Company Discount, Facilities & Events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Credit Union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Child Care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Dependent Life Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Note:** If you can't offer a benefit in a nondiscriminatory manner *because of reasons outside your control*, (e.g., there are no insurance providers in your area willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent, submit a completed Reasonable Measures Application Form (HRC-12B-102) with all necessary attachments, and have your application approved by the HRC. For more information, see Rules of Procedure section II B or contact the HRC.

➤ **Section 3. Required Documentation**

**YOU MUST SUBMIT SUPPORTING DOCUMENTATION**

to verify each benefit marked in Question 2C. Without proper documentation, your company cannot be certified as complying with Chapters 12B & 12C. For example, to document medical insurance submit a statement from your insurance provider or a copy of the eligibility section of your plan document; to document leave programs, submit a copy of your company's employee handbook. If documentation of a particular benefit does not exist, attach an explanation. For more information see the Quick Reference Guide at <http://www.sfgov.org/site/uploadedfiles/sfhumanrights/forms/quickref.pdf> or contact the HRC.

Have you submitted supporting documentation for each benefit offered?  Yes  No

➤ **Section 4. Executing the Document**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(City) (State)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Name of Signatory (please print)

\_\_\_\_\_  
City, State, Zip Code

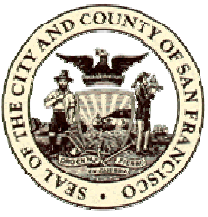
\_\_\_\_\_  
Title

➔ **Submit this form and supporting documentation to:** HRC, 25 Van Ness Ave., Suite 800, San Francisco, CA 94102-6033, or to the City department that sent it to you if the department so requests.

✓ **Resource Materials** and additional copies of this form may be found at: [www.sfhrc.org](http://www.sfhrc.org).

☎ **For assistance** please contact the Human Rights Commission at 415-252-2500 (TTY: 415-252-2550).





# CITY AND COUNTY OF SAN FRANCISCO HUMAN RIGHTS COMMISSION

## QUICK REFERENCE GUIDE TO EQUAL BENEFITS COMPLIANCE

### ➤ *Step 1: Understand the Law*

#### **What does the law require?**

Effective June 1, 1997, Chapter 12B of the San Francisco Administrative Code was amended to prohibit 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.

#### **Who is covered by this law?**

All entities who hold or seek to enter into contracts with the City and County of San Francisco for public works or improvements, for a franchise, concession or lease of City property, or for goods, services or supplies to be purchased at the expense of the City and County are covered by this law. The law does not cover entities with which the City does less than \$5,000 worth of business per year. Subcontractors are not required to comply with this law. Each party to a joint venture must comply independently.

#### **What benefits are covered?**

In most cases, the law applies to all benefits offered by a contractor to its employees who have spouses or domestic partners and all benefits offered directly to such spouses or domestic partners, even when the employee pays the entire cost of the benefit. This includes, but is not limited to, medical insurance, retirement plans, leaves of absence (such as bereavement and family medical leave), use of company facilities, and discounts.

#### **What is a domestic partner?**

The law defines a domestic partner as any person whose domestic partnership is currently registered with a governmental body pursuant to state or local law. This includes both same-sex and opposite-sex couples. To comply with the law, verification of domestic partnerships may take place only to the same degree and in the same manner as marriages are verified.

#### **What if a company will comply but needs time to do it?**

Once a contractor makes it clear that it will comply with Chapter 12B (by submitting a 12B Declaration indicating compliance), in certain situations ending discrimination in benefits may be delayed. For instance, offering medical insurance may be delayed until the contractor's next open enrollment period; other benefits, such as bereavement leave, may be delayed until the contractor's personnel policies can be revised. Benefits offered through a union agreement may also be delayed under certain circumstances. For more information, see Rules of Procedure section II.E., Substantial Compliance Affidavit (Form HRC-12B-103), or contact the HRC.

#### **What if a contractor is unable to offer benefits equally?**

Some contractors are unable to find an insurance company willing to offer domestic partner coverage. Others may find that a federal law prohibits extending a particular benefit to domestic partners

on the same basis as it is extended to spouses. When a contractor takes all reasonable measures to stop discriminating, but can't for reasons outside its control, it can comply with Chapter 12B if it agrees to pay a cash equivalent. The HRC decides whether reasonable measures have been taken. A cash equivalent is the amount of money paid by an employer for the spousal benefit that is unavailable for domestic partners, or vice versa. For more information, see Rules of Procedure section III, Reasonable Measures Application (Form HRC-12B-102) or contact the HRC.

### ➤ *Step 2: Complete a Chapter 12B Declaration (Form HRC-12B-101)*

#### **Answering the Questions**

Section 1 asks for information about your company. Please complete all items; if you don't know your vendor number, you may leave that item blank.

Section 2, Question 1A asks whether your company prohibits discrimination against people based on the categories listed. This policy does not need to be in writing.

- Answer "YES" if your company does have such a policy.
- Answer "NO" if your company does not have such a policy.

Question 1B asks whether your company agrees to include a nondiscrimination clause in all subcontracts entered into for the performance of a substantial portion of any contracts you have with the City. This clause must include all of the categories listed in question 1a. You must answer this question even if your company will not be entering into any subcontracts associated with work performed for the City.

- Answer "YES" if you will agree to include a non-discrimination clause in subcontracts.
- Answer "NO" if you will not agree to include a non-discrimination clause in subcontracts.

Question 2A asks whether your company offers benefits (such as medical insurance) to employees' spouses or to employees because they are married (such as bereavement leave which can be taken because of the death of a spouse, or family medical leave which can be taken because of a spouse having a serious medical condition).

- Answer "YES" if you offer any such benefits.
- Answer "NO" if you do not offer any such benefits.
- If you have no employees, you should answer "NO."

**Helpful hint:** *You are considered as offering a benefit even if you don't pay for it. If access to the benefit is offered, but the cost must be paid in whole or in part by the employee, you should still answer "YES."*

**Question 2B** asks whether your company offers benefits (such as medical insurance) to employees' domestic partners or to employees because they are in a domestic partnership (such as bereavement leave which can be taken because of the death of a domestic partner, or family medical leave which can be taken because of a domestic partner having a serious medical condition).

- Answer "YES" if you offer any such benefits.
- Answer "NO" if you do not offer any such benefits.
- If you have no employees, you should answer "NO."

**Helpful Hint:** To comply, your answers to questions 2A and 2B should be the same. In very limited circumstances, you may comply without offering benefits equally. See Reasonable Measures Application, Form HRC 12B-102.

**Question 2C** should be filled out **ONLY** if you have answered "YES" to question 2A and/or 2B. It asks you to indicate which benefits you offer to spouses (or employees because they are married), which benefits you offer to domestic partners (or employees because they are in a domestic partnership), and which benefits you do not offer. Please indicate only those benefits offered. If you offer benefits not already listed, write them in where it says "other". Remember, offering access to a benefit is still considered a benefit, even if your company does not pay for it.

**Note:** If you can't offer all benefit in a nondiscriminatory manner because of reasons outside your control, (e.g., there are no insurance providers willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent, submit a completed Reasonable Measures Application Form (HRC-12B-102) with all necessary attachments, and have your application approved by the HRC. For more information, see Rules of Procedure section II.B. or contact the HRC.

### ➤**Step 3: Attach the Necessary Documentation**

**Section 3** states that you must submit documentation that verifies all benefits marked in your answer to Question 2C are offered in a nondiscriminatory manner. When possible, it is best if you submit this documentation along with your Declaration form. For policies that are unwritten, submit a letter to the HRC indicating this. Use the list below as a guide for the type of documentation needed.

**Medical Insurance** - A statement from your medical insurance provider that confirms spouses and domestic partners (as defined under this law) receive equal coverage in your medical plan. This may be in a letter from your insurance provider, or reflected in the eligibility section of your official insurance plan document. Similar documentation is needed for other types of insurance plans.

**Retirement Plans (including 401k & pension plans)** - The sections of your pension plan detailing how employees receive benefits. This should cover joint annuity options and pre-retirement death benefits. Documentation should indicate that employees with domestic partners and employees with spouses receive the same benefits and payment options.

**Bereavement Leave** - Your bereavement leave or funeral leave policy indicating the benefit is offered equally. If your policy allows employees time off from work because of the death of a spouse, it should also allow for time off because of the death of a domestic partner. If the policy allows for time off due to the death

of a parent in-law or other relative of a spouse, it must include time off for the death of a domestic partner's equivalent relative.

**Family Leave** - Your company's Family and Medical Leave Act policy. All companies with 50 or more employees must offer this benefit. Your policy should indicate that employees may take leave because of the serious medical condition of their spouse or domestic partner.

**Parental Leave** - Your company's policy indicating that employees may take leave for the birth or adoption of a child, to care for a child who is ill, and/or to attend school appointments. If leave is available for step-children (the spouse's child) then leave also should be available for the child of a domestic partner.

**Employee Assistance Program** - Your company's employee assistance program policy confirming that spouses, domestic partners and their parents and children are equally eligible (or ineligible) for such benefits.

**Relocation & Travel** - Your company's policy confirming that expenses for travel or relocation will be paid on the same basis for spouses and domestic partners of employees.

**Discounts, Facilities & Events** - Your company's policy confirming that discounts, facilities (e.g. gym) and events (e.g. holiday party) are equally available to spouses and domestic partners of employees.

**Credit Union** - Documentation from the credit union indicating that spouses and domestic partners have equal access to credit union services.

**Child Care** - Documentation that the children of spouses (step-children) and children of domestic partners have equal access to child care services.

**Other Benefits** - Documentation of any other benefits listed to indicate that they are offered equally.

### ➤**Step 4: Use the Available Resources**

The Human Rights Commission has developed resources to help with the compliance process:

**Rules of Procedure** for guidelines on how the Ordinance is being implemented; definitions of the terms used in the Ordinance; and information on jurisdiction and other matters.

**Resource Materials** for in-depth answers to commonly asked questions on medical benefits, pensions plans, taxation; information on the cost of providing domestic partner benefits; and sample employee policies.

**Insurance List** of insurance providers around the country willing to write policies inclusive of domestic partners.

You can get copies of these documents by calling the Human Rights Commission at 415-252-2500, or download them from the Commission's website at: [www.sfhrc.org](http://www.sfhrc.org).