



**BUILDING DESIGN AND CONSTRUCTION
DEPARTMENT OF PUBLIC WORKS
CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO, CALIFORNIA**

REQUEST FOR QUALIFICATIONS

ARCHITECTURAL SERVICES

ON AN

AS-NEEDED BASIS

September 26, 2012

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ANNOUNCEMENT

Building Design and Construction (BDC), Department of Public Works (DPW), City and County of San Francisco (City) announces a Request for Qualifications (RFQ) for the provision of architectural services on an as-needed basis for public building projects, including, but not limited to renovation, relocation, adaptive re-use of existing facilities, modifications to life safety systems and other infrastructure, and new facilities.

Proposals will be received at 30 Van Ness Avenue, Suite 4100, 4th Floor, San Francisco, California 94102 until **2:30 P.M. Pacific Time., November 15, 2012**. Consultants shall submit proposals as required in Section 4.0 of the RFQ package. Late submittals will not be considered. Digital files of the RFQ Package may be downloaded at no cost at <https://stgint.sfdpw.org/biddocs>.

Please visit the DPW's Contracts, Bid Opportunities and Payments webpage at www.sfdpw.org for more information. Notices regarding Addenda and other proposal changes will be distributed by email to Plan Holders.

The As-Needed Services contracts will only be utilized when the following conditions exist: Building Design and Construction is working at full capacity and postponement of pending projects would be contrary to the public interest, or Specialized services are required that are not available internally and for which there is no ongoing demand that justifies the hiring of permanent City staff with the necessary expertise.

As-Needed services will include, in general, the full range of professional architectural planning and design services including services of sub-consultants, typically required for architectural projects in the public sector. Core Disciplines required to be included in each proposal are as follows: Architectural (Prime Consultant), Structural, Electrical, Mechanical and Plumbing Engineering, Resource Efficiency, and Cost Estimation. Larger and more complex projects may require additional subconsultants, as described within Section 2 Scope of Services. Services requested under the as-needed contract may include one or more of the following: condition assessments, feasibility studies, architectural programming, design, construction documents on CAD, construction administration, cost estimation, scheduling, ADA compliance, historic preservation, and LEED Certification, as well as associated engineering and/or consulting services such as geotechnical, civil, structural, electrical, mechanical, elevator, fire protection, code compliance, waterproofing, roofing, landscape architecture, and facilities' furnishings/ interior design.

Building Design and Construction is seeking to engage four (4) architectural firms and/or joint venture teams to be selected through this RFQ. The product of this Request for Qualifications (RFQ) and the selection process will be a Master Agreement (Contract) with each selected firm or team. Each Contract will have a five-year term. Individual Contract Service Orders (CSO) must be certified for services on specific projects during the first three years of the five-year contract. The final two years of the contract term may be used for completion of services certified during the first three years. The aggregate fee cap for all As-Needed Contracts is \$4,000,000; the fee cap for each Contract will be \$1,000,000. Higher ranked firms may be awarded a higher fee cap than lower ranked firms. Work will be distributed based on the best match of qualifications and expertise to particular projects, and the firms' past performance on City projects, at the discretion of the City.

A Pre-Proposal Orientation Meeting for candidate firms will be held on **Thursday, October 11, 2012 at 3:30 P.M.**, at Building Design and Construction, Main Conference Room at the address noted above. The San Francisco Human Rights Commission (HRC) will participate in the Orientation Meeting to answer questions and will monitor the selection process. Please refer to Form 2B, HRC Attachment 2

regarding applicable points for attending pre-proposal conferences.

All Proposals are due by 2:30 P.M., November 15, 2012- Building Design and Construction . No late submittals will be accepted; no postmarks will be accepted. Submit proposals to the attention of Robert Nist, Senior Architect, Project Control& Services, DPW- Building Design and Construction, 30 Van Ness Avenue, 4th floor, San Francisco, California 94102.

Written questions regarding the RFQ shall be directed to Robert Nist, via e-mail at robert.nist@sfdpw.org. The deadline for receipt of clarification requests is **five (5) business days before submittal deadline of November 15, 2012.**

The selection process will be based on evaluations of written submittals and oral interviews of short-listed firms. The City will negotiate an agreement with the four (4) highest-ranking firms based on a City-determined scope of work and a fee schedule acceptable to the City, as described in Section 3 and Appendix D of this Request for Qualifications.

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 20%. 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.

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.

1. INTRODUCTION

Building Design and Construction , (BDC), Department of Public Works (DPW), City and County of San Francisco (City), is seeking to engage four (4) architectural firms and/or joint venture teams to provide architectural services for public facilities on an as-needed basis, as described in Section 3: SCOPE OF SERVICES.

The BDC is the primary agency providing multi-disciplinary architectural design and consultation services to other City Departments and Agencies such as: the Library, Recreation and Park, Fire, Police, Public Health, Performing Arts, Convention Facilities, Arts Commission, Zoo and other departments. The BOA also provides architectural services to supplement efforts of other CCSF departments with their own in-house engineering and/or architecture staff, such as PUC, Muni, Port and Airport.

Work will be distributed among the selected firms or teams based on the best match of qualifications and expertise to particular projects, and the firms' past performance on City projects, at the discretion of the City. The As-Needed Services contracts will only be utilized when the following conditions exist:

☐ BDC is working at full capacity and postponement of pending projects would be contrary to the public interest, or Specialized services are required that are not available internally and for which there is no ongoing demand that justifies the hiring of permanent City staff with the necessary expertise.

As of September 15, 2004, the City's Environmental Code requires all (occupied) City building projects of 5,000 sq. ft. or greater to achieve at least a LEED Silver Certification whenever feasible. Thus, resource efficient design is an important requirement of any City public facility. The Respondent's "green building" experience and documented ability to provide integrated design for resource efficiency will be a part of the scoring and selection process. The selected architectural firms and / or joint venture teams must provide this expertise by having "LEED" accredited professionals on their staff (either Prime or Sub-consultant) and documented ability within the team's experience to provide these integrated design services.

The product of this Request for Qualifications (RFQ) and the selection process will be a Master Agreement (Contract) with each selected firm or team. **Each Contract will have a five-year term.** Individual Contract Service Orders (CSO) must be certified for services on specific projects during the first three years of the five-year contract. The final two years of the contract term may be used for completion of services certified during the first three years. The aggregate fee cap for **all As-Needed Contracts is \$4,000,000; the fee cap for CSO work under each Contract will be \$1,000,000, if 4 team/firms are selected.** Higher ranked firms may be awarded a higher fee cap than lower ranked firms. There is no guarantee of any work, or a minimum amount of work, for any individual firm or a group of firms selected under this RFQ.

This RFQ sets forth the qualifications needed, describes the submittal requirements, establishes the criteria for selection and defines the selection process and provides a Sample Agreement used by the City.

The Department of Public Works, in accordance with the Local Business Enterprise (LBE) ordinance and the Mayor's executive directive, encourages the formation of associations to include certified local businesses enterprises as prime consultants. Further information regarding HRC requirements can be found in Section 6 and Appendices F & G of this RFQ.

2. TENTATIVE RFQ SCHEDULE ACTIVITY & DATES

Advertise RFQ September 26th, 2012

Pre-Proposal Orientation meeting October 11, 2012 at 3:30 PM – Building Design & Construction 30 Van Ness Ave., Suite 4100-Main Conference Room

Proposal Submittal Due: 2:30 P.M., November 15, 2012

- Building Design and Construction, 30 Van Ness Ave., Suite 4100-4th Floor.

Oral Interviews Notification, November 28th, 2012

Oral Interviews with Selected Firms, December 11, 2012

Final Selection, January 3, 2013

Final Selection Notification, January 9, 2013

Master Agreement Initiated, January /March, 2013

3. SCOPE OF SERVICES

A. Scope of Services

The prime consultant shall provide professional design services in a coordinated and integrated fashion for each designated project, with the involvement of all disciplines necessary to execute a given scope. The prime consultant, in addition to providing the required technical expertise, shall also provide all required management and coordination of the disciplines to reliably execute the work within an assigned schedule and budget. Demonstrated capacity to effectively manage projects is

essential, as well as the ability to expedite projects through approvals agencies.

Projects will range from full-service design / bid / build projects requiring multiple disciplines, to projects of limited scope involving only one specialized consulting service. Prime consultants may be selected on the basis of specific, specialized services or expertise. Some disciplines may be utilized more heavily than others and some disciplines may not be utilized at all during the course of the contract, at the discretion of the City.

Each proposal must include the Core Sub-Consultant Disciplines listed below. Proposals that do not include all Core Disciplines shall be considered non-responsive and shall be rejected. Core Discipline Sub-consultants may be used to meet the 20% of the HRC sub-consulting goal.

- ☐ Structural Engineering
- ☐ Mechanical / Plumbing Engineering
- ☐ Electrical Engineering
- ☐ Resource Efficiency, with availability of LEED Accredited Professional(s) named as a Key Personnel on the as-needed team.

☐ Cost Estimation & Other Disciplines below must be included in your proposal:

- ☐ Building Commissioning
- ☐ Code Compliance
- ☐ Elevator Engineering
- ☐ Historic Preservation
- ☐ Interior Design
- ☐ Landscape Architecture
- ☐ Project Scheduling
- ☐ Roofing/Waterproofing consultant expertise
- ☐ Signage & Way Finding
- ☐ Traffic Engineering
- ☐ Civil Engineering
- ☐ Acoustical A/V
- ☐ Geotechnical Engineering
- ☐ Lighting Design

Candidate firms are advised that the following services represent Recommended Sub-Consultant Disciplines that may be included in their proposals, in addition to the Core Sub-Consultant Disciplines listed above. Recommended Sub-Consultant Disciplines may also be used to meet the HRC sub-consulting goal. It is highly desirable to list LBE firms for both Core Sub-Consultant Disciplines and as well as Other Required Sub-Consultant Disciplines in order to increase your ability to meet HRC sub-consultant goal. Responses to the RFQ will be judged, in part, on the extent to which your team includes listings of the Other Required Sub-Consultant Disciplines as indicated above.

The professional work products to be delivered may include, but are not limited to:

- ☐ Master Plans
- ☐ Environmental Reviews
- ☐ Programming and Planning Studies
- ☐ Assessments of Existing Facilities
- ☐ Green Building Evaluations
- ☐ Code Evaluations
- ☐ Utility Studies
- ☐ Design Drawings

- ☐ Specifications
- ☐ Renderings/Models/Mock-ups
- ☐ Cost Estimates
- ☐ Project Schedules
- ☐ Building Commissioning
- ☐ Post Occupancy Evaluations
- ☐ Peer Reviews
- ☐ Technical Reports

Per the Standard Agreement, the City shall own all original work products produced under this RFQ. Consultants shall provide all deliverables to the City in both hard copy and electronic files.

Typical submittal formats include, but are not limited to:

- ☐ CAD drawings in AutoCAD 2008, Architectural Desktop, and Revit
- ☐ Written documents in Microsoft Word
- ☐ Cost estimates or other numerical information in Microsoft Excel
- ☐ Schedules in Microsoft Project or Primavera;
- ☐ Pictures in JPEG or bitmap
- ☐ Web-ready documents in HTML or Adobe Acrobat

B. Professional Experience

The minimum levels of professional experience listed below reflect the relative levels of experience and judgment required during the course of the Master Agreement for as-needed architectural services. Prime Consultants and Core Discipline Sub-consultants should utilize Appendix C Discipline/ Sub-Consultant List; form to document this experience for at least five projects. Projects cited to document the team's experience may be for public, commercial, or industrial facilities; must be at least 80% complete in construction by **November 15th, 2012**; and must have a construction value of at least **\$1,500,000 and constructed within the last 5 years from this date.**

- ☐ Prime Consultants: at least five projects, including at least two projects for a public sector client and at least two projects for renovation and/or adaptive re-use.

- ☐ **Core Discipline Sub-consultants:**

- **Structural Engineering:** at least five projects, including at least two projects involving seismic retrofits of multi-story buildings with a construction value of at least \$1,500,000.
- **Mechanical / Plumbing Engineering:** at least five projects, including at least two projects for renovation and/or adaptive re-use that required an increase in capacity of existing building systems.
- **Electrical Engineering:** at least five projects, including at least two projects for renovation and/or adaptive re-use that required an increase in capacity of existing building systems.
- **Resource Efficiency:** at least five projects involving design of facility components or systems that have been submitted for LEED ratings.
- **Cost Estimation:** at least five projects, including at least two projects for renovation and/or adaptive re-use.

4. SUBMITTAL REQUIREMENTS

Please submit the following items:

- ☐ The submittal package shall consist of eight (8) bound copies of the Proposals, with two sets

containing original signatures, and shall be submitted in 8-1/2" X 11" format. All copies shall be clearly labeled.

☐ All required HRC forms and billing rates shall be submitted in two separately sealed envelopes that are clearly labeled. Submit two sets of HRC forms, one original with the Good Faith Outreach Documents and one copy without the Good Faith Outreach Documents; both sets separately bound within the sealed envelope. **The Proposals should be delivered to:**

Project Control & Services, DPW- (Building Design and Construction)

Attention: Robert Nist

**30 Van Ness Avenue, Suite 4100
San Francisco, CA 94102**

Proposals and complete HRC forms are due by **2:30 pm Pacific Time, November 15th, 2012; time as determined by the US Official Time <http://www.time.gov/>**. Facsimiles and postmarks shall not be considered in judging the timeliness of submissions. Late submissions will not be accepted or considered.

Please visit the DPW's Contracts, Bid Opportunities and Payments webpage at www.sfdpw.org for more information.

Proposers are responsible for reviewing all portions of this RFQ. Questions and clarifications shall be requested in writing via email. Requests for clarifications should include name of individual to be contacted, company name, and a telephone number where the individual can be reached. Verbal responses, explanations or interpretations do not govern over the written RFQ. The City will issue a clarification in writing if necessary. The deadline for receipt of clarification requests is five (5) business days before the submittal deadline. Questions may be emailed to robert.nist@sfdpw.org. The City will make a good faith effort to respond to requests for clarifications within five business days. If necessary, the deadline for submissions will be extended via Addendum.

5.. CONTENTS OF PROPOSALS

Provide the following information in the order requested, separated by tabbed dividers, as indicated below. Provide Items in Appendices D, F, and G in separate, clearly identified, sealed envelopes. Failure to submit all listed Items may result in a determination of non-responsiveness and rejection of the proposal. Refer to Proposal Submittal Checklist at end of this Section.

A. GENERAL REQUIREMENTS

- ☐ Furnish a cover letter (2 page limit) summarizing the team's experience and approach for providing services, as it relates to key points of the RFQ.
- ☐ Table of Contents listing all materials contained within the proposal.

B. QUALIFICATIONS: AS-NEEDED TEAM

Prime Consultant / Joint Venture firm(s) and Core Discipline sub-consultant firms: Submit Appendix B.1 Experience Statement - Firm.

- ☐ The full name(s) and addresses of the firm(s)/joint venture prime(s). If submitting as a joint venture, clearly indicate the exact joint venture name the RFQ is being submitted under.
- ☐ Name and phone number of a designated contact person.

- ☐ For joint ventures, clearly delineate the responsibilities of each firm. Indicate the number and disciplines of personnel in each firm's local office.
- ☐ A statement describing the firm's/joint venture's qualifications, experience, and resources, demonstrating the capability to successfully furnish services as described in this Request for Qualifications.

C. QUALIFICATIONS - KEY PERSONNEL

- ☐ Prime Consultant/ Joint Venture firm(s) and Core Discipline firms: Submit Appendix B.2 Experience Statement - Key Personnel, for those individuals designated as Key Personnel.

"Key Personnel" is defined as those members of the team who will have direct, hands-on responsibility within their respective disciplines for project design and coordination, during periods of active delivery of the firm's professional services. Changes to Key Personnel during the term of the Contract may be made only with the prior written authorization by the City.

D. DISCIPLINE / SUBCONSULTANT LISTING

Provide listing for the following sub-consultants (a qualified sub-consultant can perform more than one type of services): Submit Appendix C: Discipline/ Sub-Consultant List. A Prime Consultant or qualified sub-consultant may provide services in more than one discipline; be very clear in your proposal, if this is what is being proposed. All listed Sub-consultants in responsive submittals must remain a part of the As-Needed Team and will not be changed during the selection process and/or Contract negotiation.

Core Disciplines:

- ☐ Structural Engineering
- ☐ Mechanical/ Plumbing Engineering
- ☐ Electrical Engineering

Resources Efficiency, with availability of LEED Accredited Professional(s) named as a Key Personnel on the as-needed team.

- ☐ Cost Estimation

Other Required Disciplines:

- ☐ Building Commissioning
- ☐ Code Compliance
- ☐ Elevator Engineering
- ☐ Historic Preservation
- ☐ Interior Design
- ☐ Landscape Architecture
- ☐ Project Scheduling
- ☐ Roofing/Waterproofing consultant expertise
- ☐ Signage & Way Finding
- ☐ Traffic Engineering
- ☐ Civil Engineering
- ☐ Acoustical A/V
- ☐ Geotechnical Engineering
- ☐ Lighting Design

E. DISCIPLINE / SUBCONSULTANT QUALIFICATIONS (10 PAGE LIMIT NOT INCLUDING RESUMES)

This section shall provide:

- ☐ **The full name(s) and addresses of the sub-consultant firms** for, structural engineering, mechanical/plumbing engineering, electrical engineering, resource efficiency, with LEED accredited professional(s), and cost estimator. Provide name and phone number of a designated contact person for each.
- ☐ **A brief description of the professional services routinely provided** on architectural contracts, and the past working history between the firm and the prime consultants, if applicable. Indicate the number and disciplines of personnel in each firm's local office.
- ☐ **A statement describing the firms' qualifications, experience, and resources**, demonstrating the capability to successfully furnish services as described in this Request for Qualifications.
- ☐ **A list of all on-going or recently completed industry related projects of the firm/joint venture within the last 3 years.** References for all projects with names of clients, contact names/titles and phone numbers shall be included in the list. Highlight projects where the client is a municipality or government agency.

F. FIRM'S APPROACH AND MANAGEMENT CAPABILITY (2 PAGE LIMIT)

Provide a description of the firm's overall approach addressing the following:

- ☐ **Provide a clear statement of firm's/joint venture's understanding of the nature and extent of the services required** and an outline of how the consultant team will be organized to perform the various services outlined in the Scope of Services.
- ☐ **Indicate the firm's availability to perform on short notice.**
- ☐ **Indicate the availability of staff and subconsultants to perform numerous projects at the same time.**
- ☐ **If the prime is a joint venture, explain 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.
- ☐ **Describe the team's procedures for project management, cost, schedule and quality control.**

G. LIST OF BILLING RATES

Submit Appendix D: Fee Schedule and Billing Rates. Candidate firms are to provide, in one Response only, in a clearly labeled sealed envelope, a list of hourly rates and billing rates for all staff positions and rates for reimbursable charges (see Appendix D). The information shall be submitted in a clearly identified sealed envelope securely attached one (1) original and (2) copies to one copy of the submittal.

This information will only be opened after the selection process is completed, and shall form the basis for negotiating the billing schedule for the As-Needed Agreement for professional services. The City reserves the right to request additional financial detail to support the rates and the inherent multipliers.

H. ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

Submit one (1) wet-signed original of the Acknowledgment of Receipt of all Addenda with Proposal.

I. HUMAN RIGHTS COMMISSION DOCUMENTS

Submit documents listed within Appendix F to include Human Rights Commission forms 2A, 2B, 3, 4 (if applicable), and 5 as required in Appendix F, Human Rights Commission Attachments in a sealed envelope that is clearly labeled as such. **Any questions regarding the Human Rights Commission program should be directed to HRC Contract Compliance Officer Selormey Dzikunu via email at**

Selormey.Dzikunu@sfdpw.org or at (415) 558-4059. Note that Human Rights Commission Attachment 2 may require additional forms to be submitted directly to the Human Rights Commission by the proposal submission date. After the project has started, progress payment reports are to be submitted to the City's Project Manager and the HRC using HRC Forms 7, 8 and 9. HRC forms may be obtained at the following link: www.sf-hrc.org

J. DECLARATION AND CERTIFICATION FORMS

Submit documents listed within Appendix G to include wet-signed originals of each document listed below in Proposal One. Proposals Two through Eight may include copies of these documents.

☐ San Francisco Admin. Code, Chapter 12P: Minimum Compensation Ordinance

Declaration Form

☐ San Francisco Admin. Code Chapter 12P: Health Care Accountability Ordinance

Declaration Form

☐ First Source Hiring Program Phase II Certification Form.

Certification of Proposer Regarding Debarment and Suspension – from Prime or Joint Venture

☐ Certification of Subcontractor, Lower Tier Subcontractor or Supplier Regarding Debarment and Suspension – from all subs

See Proposal Submittal Checklist on following page.

**PROPOSAL
SUBMITTAL CHECKLIST**

| Proposal Contents per RFQ Section 4 | | ✓ Check if included |
|--|--|----------------------------|
| 1 | General Requirements Cover Letter Table of Contents | |
| 2 | Qualifications: As-Needed Team See Appendix B.1: Experience Statement - Firm | |
| 3 | Qualifications: Key Personnel See Appendix B.2: Experience Statement Key Personnel | |
| 4 | Discipline/ Subconsultant Listing See Appendix C: Discipline/ Subconsultant List | |
| 5 | Subconsultant Qualifications: See Appendix B.1,B.2 ,C &etc.: Section 5-D- Core Disciplines & Recommended Disciplines | |
| 6 | Firm's Approach & Management Capability | |
| 7 | Human Rights Commission Documents See Appendix F: Human Rights Attachments (On Line) | |
| 8 | List of Billing Rates See Appendix D: Fee Schedule and Billing Rates | |
| 9 | Acknowledgement of Receipt of Addenda(s) <u>Section 5- H.</u> | |
| 10 | Declaration and Certification Forms See Appendix G: Declaration and Certification Forms | |

6. HUMAN RIGHTS COMMISSION 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.

1. Human Rights Commission Requirements

a. 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.

b. The HRC Requirements are a part of the RFQ and HUMAN RIGHTS COMMISSION ATTACHMENT 2 – Documents may be obtained via the following link: <http://www.sf-hrc.org> and again referenced in Appendix F. Proposals may be eligible for up to 10% rating bonus if certain requirements stated in the HRC Attachment are met.

c. The LBE sub-consulting goal for this project is 20% of the total value of the services to be procured. The 20% goal must be met with LBE firms that are certified as LBE firms by the San Francisco Human Rights Commission. The HRC website (www.sf-hrc.org) provides a current list of all certified LBE firms. All firms listed to meet the LBE sub-consulting goal must be certified as LBE firms by HRC as of the due date of this proposal. **The HRC may review LBE participation for compliance when the billings have reached the following percentages of the contract amount: 30%, 50%, 70%, and 90%.**

d. All proposers must meet the subconsultant goal and submit documented good faith outreach with the proposal. Any proposal that fails to meet the specified LBE participation goal and fails to submit the good faith outreach documentation shall be considered non-responsive and shall be rejected.

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 sub-consultant 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 sub-consultants 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 sub-consultant goal has been met.

g. Proposer's must identify on HRC Form 2A the particular LBE sub-consultants and lower tier sub-consultants 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.

h. The LBE proposer is also required to comply with the established LBE sub-consulting 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 LBE Sub-consulting goal.

i. 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.

j. 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.

k. If you have any questions concerning the HRC Forms, you may contact Selormey Dzikunu, the Human Rights Commission Contract Compliance Officer for the Department of Public Works / Building Design and Construction at (415) 558-4059. The forms will be reviewed and approved by HRC prior to the interviews.

2. LBE Participation

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 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 calling HRC at (415) 252-2500 or visiting their website at www.sf-hrc.org. The rating bonus applies at each phase of the selection process. The application of the rating discount is as follows:

- a. A 5% rating bonus to a joint venture with a LBE participation that equals or exceeds 35%, but is under 40%; or
- b. A 7.5% rating bonus to a joint venture with a LBE participation that equals or exceeds 40%.
- c. A 10% rating bonus to:
 - ☐ A LBE; or
 - ☐ A joint venture between or among LBEs.

7. City Contract Requirements

Before any contract can be certified, the Consultant must comply with a number of City ordinances. Reference the Standard City Agreement in Appendix E and Declaration and Certification Forms in Appendices F & G. Note the following ordinances:

- ☐ **Business Tax Registration Certificate pursuant to Ordinance 345-88.** Consultants can register for a current certificate with the Business Tax Division of the Tax Collector of the City of San Francisco. The telephone number of the Business Tax Division is (415) 554-4426.
- ☐ **McBride Principles.** The McBride Principles urge companies doing business in Northern Ireland to move towards resolving employment inequities in Northern Ireland. Acknowledgment of the McBride Principles will be a part of any contractual agreement between the City and the Consultant.
- ☐ Contracts awarded as a result of this RFQ will require **the following insurance provisions:**

1. Consultant will maintain in force, during the full term of the contract, insurance in the following amounts and coverage:

- a. **Worker's Compensation**, with Employer's Liability limits not less than \$1,000,000 each accident.
- b. **Comprehensive General Liability Insurance** with limits not less than \$1,000,000 each occurrence, \$2,000,000.00 total aggregate for bodily injury, property damages, contractual liability, personal injury, products and completed operations and.
- c. **Business Automobile Liability Insurance** with not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage.
- d. **Professional Liability insurance** with limits not less than \$1,000,000 each occurrence with respect to negligent acts and errors and omissions arising from performance of services.

e. Coverage's shall contain a waiver of subrogation in favor of the City and County of San Francisco, its officers, agents and employees.

2. Insurance companies shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best rating not less than "A-, VIII" and shall be satisfactory to the City.

3. Comprehensive General Liability and Business Automobile Liability Insurance policies shall be endorsed to provide the following:

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

b. That such policies are primary insurance to any other insurance available to the Additional Insured Parties, with respect to any claims arising out of the Contract, and that insurance applies separately to each insured against who claim is made or suit is brought. Joint Ventures/Partnerships: Each participant in the joint venture/partnership must include the joint venture or partnership as a Named Insured on each of their separate policies, with respect only to the interests and activities of that participant in the joint venture or partnership.

c. For indemnification requirements see Standard City Agreement, Appendix E.

☐ **Minimum Compensation Ordinance (MCO)** as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P). The City and County of San Francisco requires minimum compensation for employees. The text of the MCO is available on the web at www.ci.sf.ca.us\MCO

☐ **Non-Discrimination Provisions of section 12B.1 and 12B** of the San Francisco Administrative Code

☐ **Conflict of Interest set forth in Section 8.105 of the City Charter**, and section 87100 et seq. of the Government Code of the State of California.

☐ **Domestic Partners Ordinance 440-96, as amended by Ordinance 481-96.** Prohibits discrimination in the provision of benefits between employees with registered domestic partners and employees with spouses.

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 calling the HRC Equal Benefits Section at (415) 252-2500 or by visiting the HRC website.

2. The Consultant shall be compliant and certified with the above provisions before award of contract. Consultants that are already 12B (Equal Benefits for domestic Partners and Spouses) compliant and have no changes to the above provisions do not have to fill out the San Francisco Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefit forms in Appendix F. 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 12B compliance status, shall complete the declaration (HRC Form-12B-101).

3. The completed form and supporting documents shall be sent to:

Equal Benefits Compliance Officer for DPW
San Francisco Human Rights Commission
25 Van Ness Avenue, Suite 800
San Francisco, California 94102
Phone: (415) 252-2538
Fax: (415) 431-5764

☐ **Drug – Free Workplace Policy pursuant to the Federal Drug-Free Workplace Act of 1989.** Prohibits the unlawful manufacture, distribution, dispensation, possession, or use of any controlled substance is prohibited on City premises.

☐ **Compliance with the Americans with Disabilities Act.**

☐ **Tropical Hardwood and Virgin Redwood Ban.** The City urges the Consultant not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood products, virgin redwood or any virgin redwood products.

The City recognizes that there may be a number of ordinances and resolutions that could be enacted between the time this RFQ is advertised and the time a final contract is awarded. **Consultants must comply with City ordinances and resolution in force at the time of entering into a contract with the City.**

If a candidate firm objects on any ground to any bid specification or legal requirement imposed by this RFQ, the candidate firm shall, not more than ten calendar days after the RFQ is issued, provide written notice to the Department setting forth with specificity the grounds for the objection. The failure of a candidate firm to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

8. City Rights and Options

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 reserves the right to postpone selection for its own convenience, to withdraw this RFQ at any time, and to reject any and all submittals without indicating any reason for such rejection. The City accepts no financial responsibility for any costs incurred by a Consultant in responding to this RFQ. Submitted proposals become the property of the City. Additional material submitted will not be returned unless so requested at the time of submittal.

Any interpretation of, or change in, this RFQ will be made by written addendum, and shall be incorporated into the original document. The City will not be responsible for any other explanation or interpretation.

The City expressly reserves the right at any time to:

A. Postpone selection for its own convenience, to withdraw this RFQ at any time, and to reject any and all submittals without indicating any reason for such rejection. Any interpretation of, or change in, this RFQ will be made by written addendum, and shall be incorporated into the original document. The City will not be responsible for any other explanation or interpretation.

B. Remedy technical errors in response to the RFQ; modify the published scope of service, approve or disapprove the list of sub-consultants; request specific consultants with specific expertise be added to the team. Failure by the City to object to an error, omission, or deviation in the proposal will in no way modify the RFQ or excuse the vendor from full compliance with the specifications of the RFQ or any contract awarded pursuant to the RFQ.

C. Issue a separate RFQ to retain other consultants in the event that a special need for design / consultation services is necessary and/or that a contract amount may exceed the cap allotted for this RFQ.

D. Notice Regarding Regulations for Public Records, Chapter 67.23(e) of the San Francisco Administrative Code (Sunshine Ordinance):

"Contracts, Bids and Proposals: Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision (of the ordinance) will be made available to the public upon request."

9. SELECTION PROCESS

A. Staff Review: Staff will screen all submittals for responsiveness to the RFQ requirements.

B. Evaluation of Written Submittals: Responsive submittals will be forwarded to the Selection Panel for scoring and short-listing, based on the Evaluation Criteria (See Appendix A). Eight (8) teams with highest scores will be short-listed for interviews by the Selection Panel. Depending on the number of responsive submittals the Selection Panel may interview all responsive proposals submitted.

C. Human Rights Commission Review: Responsive submittals will be forwarded to HRC review for compliance with its requirements. Rating bonuses for LBE firms are applicable at all stages of the selection process. No firm will be recommended for further consideration without HRC approval.

D. Oral Interview Notification: Notification will be sent to the firms indicating time and place of the interviews. Firms being interviewed shall bring all of their own equipment necessary for their presentation, including extension cords.

E. Oral Interview Process: The Selection Panel will conduct interviews of, and make selections from the short-listed firms.

1. Notification will be sent to the firms that are both short-listed by the Selection Panel and approved by HRC, indicating the time and place of the interviews. The Selection Panel will interview and evaluate the short-listed firms, using the Evaluation Criteria (see Appendix A). The numerical scores and rankings from the previous phase will not be considered during this evaluation. The Selection Panel members will calculate the Evaluation Subtotal for each firm.

2. It is recommended that only key individuals of each team as described in Appendix B.2 appear before the Selection Panel. Fifteen minutes prior to the start of their interview, each candidate team will have the opportunity to read the interview committee's prepared questions.

3. The interview will be divided into two components, as follows: (a) approximately 15 minutes for responding to questions from the interview committee; and (b) approximately 15 minutes for a team presentation. The contents and method of the presentation are at the discretion of the team. However, the presentation should convey the professional background and qualifications of personnel, including the projects that substantiate their skills and experience in architectural design. Firms being interviewed shall bring all of their own equipment necessary for their presentation, including extension cords.

F. Final Selection: The final selection will be based on the oral responses to a list of questions that will be distributed at the time of interview, and clarifications of the written submittal, if required, in accordance with the Evaluation Criteria (see Appendix A). Note that there is no combination of the written and oral scores; the final selection will be based exclusively on the oral interview scores of the 4 top ranked scores.

G. Negotiations: After the firms are selected and notified, the City will open and examine the submitted Billing Schedules for acceptability and appropriateness; requesting additional information and/or opening negotiations, if so required, with the firms individually. If it is not possible to complete negotiations with a selected firm within a one-month period, the City may, at its sole option, elect to drop the firm/joint venture and proceed with a fewer number of firms, add the next most-qualified firm to the pool, or restart the selection process.

H. Agreement: In the interests of uniformity, fairness and equal treatment of all consultants, the terms of the City's Standard Agreement are not negotiable. THE SUBMITTAL OF A RESPONSE TO THIS RFQ SHALL STIPULATE ACCEPTANCE BY THE RESPONDENT (S) OF THE STANDARD AGREEMENT (see Appendix E for sample City Standard Agreement).

APPENDIX A: EVALUATION CRITERIA
EVALUATOR:

FIRM: _____ DATE:

| CRITERIA | SCORE 1-100 | WTD VALUE | NET SCORE | Evaluator's Comments |
|---|----------------|--------------|-----------|-------------------------|
| A. OVERALL EXPERIENCE: 1. Capacity to perform all aspects of any services requested/ required that may arise. (X 0.10) 2. Awareness of general design and construction processes for government and/or City owned public buildings. (X0.10) | | X 0.20 | | |
| B. MANAGEMENT CAPABILITY: 1. Organization of communications and coordination. (X0.07) 2. Cost and schedule control procedures in design and construction. (X0.06) 3. Quality Assurance procedures in design and construction. (X0.07) | | X 0.20 | | |
| C. QUALIFICATIONS OF ARCHITECTURAL FIRM(S) 1. Professional background and caliber of personnel including the projects that substantiate their skills and experience in architectural design (X0.05) 2. Specific experience in working on projects in the public sector. (X0.1) 3. Past and recently completed projects that substantiate firm's experience and abilities. (X0.1) 6. LEED Certification (XO.05) | | X 0.30 | | |
| D. QUALIFICATIONS OF SUBCONSULTANTS 1. Professional background and caliber of personnel including the projects that substantiate their skills and experience. (X0.05) 2. Experience in working on projects in the public sector. (X0.1) 3. Past and recently completed projects that substantiate firm's experience and abilities. (X0.05) | | X 0.20 | | |
| E. PRESENTATION AND ORGANIZATIONAL SKILLS 1. Presentation and organization of submittal (X0.10) | | X 0.10 | | |

APPENDIX B.1:

EXPERIENCE STATEMENT - FIRM

Submit Appendix B.1 for Prime Consultant / JV firm(s) and Core Discipline firms.
If Prime Consultant is a joint venture, provide separate forms for each joint venture firm.
The proposal may be deemed non-responsive if contact information is not provided or is incorrect.

NAME OF FIRM: _____

HRC VENDOR NUMBER: _____

Vendor number may be obtained via the HRC DBE Directory website.

PROPOSED ROLE IN AS-NEEDED CONTRACT: PRIME SUB-CONSULTANT

1. FIRM PROFILE: Provide a brief description of the firm / joint venture and professional services routinely provided on architectural contracts/ projects, in particular, on public/ government projects, and the past working history of the firms, if applicable.

2. PERSONNEL: List the number and disciplines of personnel in each firm's local office

3. KEY PERSONNEL: List Key Personnel proposed for this As-Needed RFQ. Submit Appendix B.2, Experience Statement Key Personnel for listed individuals. Changes to Key Personnel during the term of the Contract may be made only with the prior written authorization by the City.

4. SPECIFIC PROJECT EXPERIENCE: Use copies of this form to list all on-going and completed projects within the last 5 years with a minimum construction value of \$1,500,000; highlight projects where the client is a municipality or governmental agency. Please refer to RFQ Section 3.B: Professional Experience for minimum levels of experience required in order for the proposal to qualify as responsive. Photographs and/or drawings may be attached at your option.

NAME OF PROJECT: _____

LOCATION: _____

IN-PROGRESS (Phase/% Complete) COMPLETE (date) _____

CONSTRUCTION VALUE: SQUARE FEET (gross) _____

OWNER: _____

CONTACT NAME / ROLE ON PROJECT: _____

CURRENT TITLE / PHONE #: _____

SUMMARY DESCRIPTION OF PROJECT: _____

DESCRIBE SERVICES PROVIDED: Role of firm on this project; for joint venture projects, clearly delineate the responsibilities of each firm.

5. SPECIFIC PROJECT, TEAM REFERENCES: Use copies of this form to provide information about each of the projects you have selected to demonstrate compliance with the minimum levels of experience required by RFQ Section 3.B Professional Experience.

NAME OF PROJECT: _____
PROJECT TEAM MEMBERS & CONTACTS / REFERENCES:
ARCHITECT: _____

CONTACT NAME / ROLE ON PROJECT: _____
CURRENT TITLE / PHONE #: _____
ADDRESS: _____

MAJOR SUB-CONSULTANT: _____
CONTACT NAME / ROLE ON PROJECT: _____
CURRENT TITLE / PHONE #: _____
ADDRESS: _____

MAJOR SUB-CONSULTANT: _____
CONTACT NAME / ROLE ON PROJECT: _____
CURRENT TITLE / PHONE #: _____
ADDRESS: _____

MAJOR SUB-CONSULTANT: _____
CONTACT NAME / ROLE ON PROJECT: _____
CURRENT TITLE / PHONE #: _____
ADDRESS: _____

GENERAL CONTRACTOR: _____
CONTACT NAME / ROLE ON PROJECT: _____
CURRENT TITLE / PHONE #: _____
ADDRESS: _____

OTHER (OPTIONAL): _____

CONTACT NAME / ROLE ON PROJECT: _____
CURRENT TITLE / PHONE #: _____
ADDRESS: _____

APPENDIX B.2:

EXPERIENCE STATEMENT - KEY PERSONNEL

The team members who will have direct, hands-on responsibility within their respective disciplines for project design and coordination will be included for the Prime Consultant/ Joint Venture Firms & Core Discipline Firms. Provide information for each individual proposed as Key Personnel. "Key Personnel" is defined as those members of active delivery of the firm's professional services.

NAME / CURRENT TITLE: _____

CURRENT JOB DESCRIPTION: _____

DESCRIBE ROLE PROPOSED FOR THIS AS-NEEDED CONTRACT: _____

NAME OF FIRM ASSOCIATED WITH: _____

YEARS OF EXPERIENCE WITH THIS FIRM: _____

YEARS OF EXPERIENCE IN THIS FIELD / DISCIPLINE: _____

PREVIOUS FIRMS EMPLOYED WITH:

NAME OF FIRM / DATES EMPLOYED: _____

CONTACT / PHONE #: _____

JOB DESCRIPTION: _____

NAME OF FIRM / DATES EMPLOYED: _____

CONTACT / PHONE #: _____

JOB DESCRIPTION: _____

NAME OF FIRM / DATES EMPLOYED: _____

CONTACT / PHONE #: _____

JOB DESCRIPTION: _____

DEGREES & REGISTRATIONS:

DEGREE / SPECIALIZATION / YEAR: _____

DEGREE / SPECIALIZATION / YEAR: _____

REGISTRATIONS / LICENSES: _____

REGISTRATIONS / LICENSES: _____

EXPERIENCE STATEMENT: REFERENCES FOR KEY PERSONNEL

OWNER: _____

CONTACT NAME / ROLE ON PROJECT:
CURRENT TITLE / PHONE #:

PROJECT NAME/ YEAR:

OWNER: _____

CONTACT NAME / ROLE ON PROJECT:
CURRENT TITLE / PHONE #:

PROJECT NAME/ YEAR:

DESIGN PROFESSIONAL: _____

List Major Sub-consultant with whom you have worked in the past;

NAME OF FIRM:

CURRENT TITLE / PHONE #:

PROJECT NAME/ YEAR:

GENERAL CONTRACTOR: _____

NAME OF FIRM:

CURRENT TITLE / PHONE #:

PROJECT NAME/ YEAR:

MAJOR SUBCONTRACTOR: _____

NAME OF FIRM:

CURRENT TITLE / PHONE #:

PROJECT NAME/ YEAR:

OTHER (OPTIONAL): _____

NAME OF FIRM:

CURRENT TITLE / PHONE #:

PROJECT NAME/ YEAR:

APPENDIX C:
DISCIPLINE / SUB-CONSULTANT LIST

A Prime Consultant or Sub-consultant may provide services in more than one discipline. Check boxes to identify each Service Provider's status as Prime / Sub-consultant, LBE or Non-LBE

| | Name of Service Provider | HRC Vendor Number | FEIN Number | Prime | Sub | LBE | Non-LBE |
|--------------------------------|---------------------------------|--------------------------|--------------------|--------------|------------|------------|----------------|
| CORE DISCIPLINES | | | | | | | |
| Structural | | | | | | | |
| Mechanical / Plumbing | | | | | | | |
| Electrical | | | | | | | |
| Cost Estimation | | | | | | | |
| Resource Efficiency | | | | | | | |
| RECOMMENDED DISCIPLINES | | | | | | | |
| Building Commissioning | | | | | | | |
| Code Compliance | | | | | | | |
| Elevator Engineering | | | | | | | |
| Historic Preservation | | | | | | | |
| Interior Design | | | | | | | |
| Landscape Architecture | | | | | | | |
| Project Scheduling | | | | | | | |
| Roofing / Waterproofing | | | | | | | |
| Signage and Way Finding | | | | | | | |
| Traffic Engineering | | | | | | | |

**APPENDIX D:
FEE SCHEDULE AND BILLING RATES**

One (1) original and two (2) copies of the Fee Schedule must be completed for the prime consultant (provide one copy each for all firms on JV team) and for each sub-consultant listed. in the HRC Attachment 2. These fee schedules shall be submitted separately in a sealed and clearly labeled envelope, and delivered with the proposal package.

The sealed envelope shall be titled “RFQ for Architectural Services on As-Needed Basis – Fee Schedule” with the name of the prime consultant or JV team.

The sealed envelope from a selected firm will be opened after the selection process is completed. The City reserves the right to review the schedule and request for changes during contract negotiations.

Consultants must submit billing rates for all prime consultants and subconsultants on the fee schedules. Due to the wide variety of work that may arise, the City reserves the right to negotiate items not specified in the fee schedule or delete certain listed items.

All billable staff rates shall be fully burdened to include labor, benefits, taxes, overhead, profit, healthcare benefit surcharges, minimum compensation accountability surcharges, costs for obtaining insurance and bonds, employee fringe benefits, employee paid time off, employee training, support and administrative services and other ancillary charges.

Administrative and clerical support services are considered part of overhead.

Rates listed in Master Agreement shall be one single rate for the five-year duration of the contract and shall remain in effect throughout the term of the contract for both the prime consultant and subconsultant.

Final acceptance by the City shall indicate only consent to the Fee Schedule as a basis for preparation for negotiation of task specific Contract Service Orders (CSO’s), applications for progress payments, and shall not constitute an agreement as to the value of each indicated item.

Information to be filled out as applicable for prime consultant(s) and for each subconsultant listed in HRC Form 2.

Name of prime consultant or sub-consultant:

Overhead rate*: %

* An audited rate is preferable but not required. Provide an itemized percentage breakdown of the items that are accounted in the overhead rate. Administrative and clerical support services are considered part of overhead.

Fully burdened staff billing rates to be calculated as follows:

Billing rate = (DL + DL x FR + DL x OH) * 1.1 = \$ /hour

Where: DL = Direct Labor (base rate)

FR = Fringe (salary burden) OH = Overhead rate

1.1 = Profit factor

Note: Overtime rate = Fully Burdened Staff Billing Rates x 1.5

Fully burdened staff billing rates/hour for professional positions (categories of positions) as indicated in table format below. If a position is not applicable, indicate "Not Applicable". If a position is not listed, utilize "Other" and describe the position. position.

| <i>Position</i> | <i>Direct Labor Rate (\$/hr)</i> | <i>Billing Rate (\$/hr)</i> |
|---------------------------------|----------------------------------|-----------------------------|
| Principal | | |
| Associate Principal | | |
| Project Manager | | |
| Project Architect | | |
| Architect, LEED AP | | |
| Technical Manager | | |
| Job Captain | | |
| Architectural Designer | | |
| Draftsperson | | |
| CAD Operator | | |
| Cost Estimator | | |
| Scheduler | | |
| Specifications Writer | | |
| Administrative Supervisor | | |
| Administrative/Clerical Support | | |
| Other (describe) | | |

Provide billing rates, if applicable, for the in-house engineering positions and disciplines in the table below

| <i>Position (In-house Engineering Services)</i> | <i>Direct Labor Rate (\$/hr)</i> | <i>Billing Rate (\$/hr)</i> |
|---|----------------------------------|-----------------------------|
| Principal | | |
| Associate Principal | | |
| Project Manager | | |
| Project Engineer | | |
| Structural Engineer | | |
| Mechanical Engineer | | |
| Electrical Engineer | | |
| Technical Manager | | |
| Structural Designer | | |
| Mechanical Designer | | |
| Electrical Designer | | |
| Draftsperson | | |
| CAD Operator | | |
| Administrative Supervisor | | |
| Administrative/Clerical Support | | |
| Other (describe) | | |

The following rates shall apply for all other services and charges, and remain in effect throughout the term of the contract for both the prime consultant and all subconsultants:

| Services | <i>Rates/Schedule</i> |
|-----------------------------|--|
| Subconsultant work | Cost plus 5% (for a maximum of two tiers of subconsultants) |
| Meal expenses | Not reimbursable |
| 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 annually. Travel expenses will be reimbursed only when work locations are outside of San Francisco and only with prior approval. Expenses associated with traveling to and from prime consultant's offices and subconsultants' offices located outside San Francisco to and from work sites within San Francisco are not reimbursable. |

The following non-reimbursable items are considered part of the work to provide services. Costs associated are considered to be included in the staff billing rate. They shall remain in effect throughout the term of the contract for the prime consultant and all subconsultants:

- Office supplies
- Office equipment
- Computers
- Telephones calls
- Cell phone and calls
- Fax
- Cameras
- Photocopies
- Safety equipment and supplies
- Tools

**APPENDIX E:
SAMPLE STANDARD CITY AGREEMENT**

(See Attached)

APPENDIX F: HRC ATTACHMENT 2 AND FORMS

Submit only one (1) set of original(s) with the Good Faith Outreach Document, and one (1) copy of all required HRC Forms without the Good Faith Outreach Document in a separately sealed and clearly labeled envelope delivered with the proposal package.

HUMAN RIGHTS COMMISSION ATTACHMENT 2 – Documents may be obtained via the following link:
<http://sfgsa.org/index.aspx?page=5365>.

APPENDIX G: DECLARATION AND CERTIFICATION FORMS

Prime consultant and each joint venture partner (if any) must complete the following forms and submit in a separately sealed and clearly labeled envelope:

- SF Administrative Code Chapters 12B Declaration Form
- 12P Minimum Compensation Ordinance (MCO) Declaration Form
- 12Q Health Care Accountability Ordinance (HCAO) Declaration Form
- Non-Construction First Source Employer's Projection of Entry Level Positions
- Certification of Proposer Regarding Debarment and Suspension
- Certification of Subcontractor, Lower Tier Subcontractor or Supplier Regarding Debarment and Suspension

**APPENDIX E:
SAMPLE STANDARD CITY AGREEMENT**

**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

This Agreement is made this day of , 20, in the City and County of San Francisco, State of California, by and between; (To be determined) As needed Architectural, Professional Services Consultant Team, 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.”

WHEREAS, the **Department of Public Works** wishes to provide ; and issued an award of contract DPW Order # _ dated effective _; and,

WHEREAS, a Request for Proposal (“RFP”) was issued on 2012 _____, 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 | To be determined |
| 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 award to [xxxx].

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 all services performed under this Agreement shall be on an "if-and-as-needed" basis. The City shall authorize services only under approved Contract Services Orders (CSOs). The CSO shall specify the scope, the duration, and the fee for particular services to be provided.

For the performance of specific tasks, the Department shall issue a CSO. All CSO's 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 _____ day of each month for work, as set forth in Section 4 of this Agreement, that the Director of Public Works OR Director of the Office of Contract Administration OR Purchasing, in his or her sole discretion, concludes has been performed as of the _____ day of the immediately preceding month. In no event shall the amount of this Agreement exceed \$.00 (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. Disallowance

If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

10. Taxes

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

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

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

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

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

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

11. Payment Does Not Imply Acceptance of Work

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

12. Qualified Personnel

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

13. Responsibility for Equipment

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

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

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

b. Payment of Taxes and Other Expenses.

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

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

15. Insurance

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

- 1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- 2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- 3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- 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. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

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

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

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

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

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

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

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

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

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

claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

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 Indemnatee or the contractors of any Indemnatee.

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. Liquidated Damages

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of _____ per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the

delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by Purchasing.

20. Default; Remedies.

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

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

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|---|---------------------------------------|
| 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:

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

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

23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties

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

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

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. 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. Supervision of Minors

Contractor, and any subcontractors, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Contractor, or any subcontractor, in which he or she would have supervisory or disciplinary power over a minor under his or her care. If Contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach (separately and collectively, “Recreational Site”), Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3). If Contractor, or any of its subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Contractor shall comply, and cause its subcontractors to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Contractor shall provide, or cause its subcontractors to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian. Contractor shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this section of the Agreement as a condition of its contract with the subcontractor. Contractor acknowledges and agrees that failure by Contractor or any of its subcontractors to comply with any provision of this section of the Agreement shall constitute an Event of Default. Contractor further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Agreement, partially or in its entirety, to recover from Contractor any amounts paid under this Agreement, and to withhold any future payments to Contractor. The remedies provided in

this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

56. Severability

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

57. Protection of Private Information

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

58. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

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

59. Food Service Waste Reduction Requirements.

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

60. Slavery Era Disclosure

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

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

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

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. 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.

63. Dispute Resolution Procedure. A Dispute Resolution Procedure is attached under the Appendix **XXX** to address issues that have not been resolved administratively by other departmental remedies.

64. 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.

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

CITY

CONTRACTOR

Recommended by:

Robert S. Nist, Contract Manager

To be Determined
Name

Tara Lamont, Acting Division Manager

Address

Fuad Sweiss, City Engineer and Deputy Director

City State Zip

Approved as to Form:
Dennis J. Herrera
City Attorney

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 _____
Deputy City Attorney

Approved:

Mohammed Nuru, Director of Public Works

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

Scope of Services is described in the RFQ (As-Needed Professional Architectural/Engineering/etc. Services).

2. Reports

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

3. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the **Department of Public Works** will be .

Appendix B
Calculation of Charges

Personnel or Hourly Rate

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

Rate for use of Contractor's equipment, if applicable

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

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

Any other applicable rates or charges under the Agreement.

Appendix C
Insurance Waiver

[Use as appropriate and only if an insurance waiver has been signed and granted by the Risk Manager.]



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

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): _____

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

► 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.

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.

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

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, (2) e-mail us at: MCO@sfgov.org, (3) Phone us at (415) 554-6292.

Routing. Return this form to the City department that sent it to you.

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; send an e-mail to HCAO@sfgov.org; or call (415) 554-6237.

Where to Send this Form. Return this form to the City Department that sent it to you.

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):

☐
☐
☐

 Tenant
 Developer
 Contractor

☐
☐
☐

 Subtenant
 Biotech Payroll Tax Exclusion applicant
 Subcontractor

Identify Project or Construction Project (if applicable):

Name of Employer:

Street Address:

City:

Telephone:

Fax:

City Department (if Contract or Lease):

Contact Person:

State:

Zip:

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

FIRST SOURCE
HIRING
 CITY & COUNTY OF SAN FRANCISCO

SAN FRANCISCO
 Office of Economic and Workforce Development

 OEWD Workforce Development
 50 Van Ness Ave, San Francisco 94102
 (415) 581-2335

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*

Certification of Proposer Regarding
Debarment and Suspension

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)*

Certification of Subcontractor, Lower-Tier
Subcontractor or Supplier Regarding
Debarment and Suspension