

City and County of San Francisco

Request for Qualifications #CP-10/11-001 for

As-Needed Consultant Services for
Environmental, Transportation, Historic Resources, and
Archeological Review



Date issued:	July 8, 2010
Pre-qualification conference:	July 20, 2010, 11:00 a.m.
Qualifications due:	August 2, 2010, 5:00 p.m.

Request for Qualifications for **Environmental and Related Consultant Services**

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Appendices:

- A. HRC Attachment 2: Requirements for Architecture, Engineering and separate Professional Services Contracts, for contacts \$29,000 and over document (separate document). Proposers must submit the following forms:

- Form 2A HRC Contract Participation form
- Form 2B HRC “Good Faith” Outreach Requirements form
- Form 3 HRC Non-discrimination Affidavit
- Form 5 HRC Employment form

The following form may be required, depending on the circumstances:

- Form 4 Joint Venture Participation Schedule

- B. Standard Forms: Listing and Internet addresses of Forms related to Taxpayer Identification Number and Certification, to Business Tax Declaration, and to Chapters 12B and 12C, and 14B of the S.F. Administrative Code. B-1
- C. Agreement for Professional Services (form P-500) separate document

Request for Qualifications for

**As-Needed Consultant Services for Environmental, Transportation, Historic Resources,
and Archeological Review**

I. Introduction and Schedule

A. General

The San Francisco Planning Department ("Planning Department") is seeking to create four pools of qualified consultants ("Pool(s)"), each with expertise in one of the following: 1) environmental impact reports and other California Environmental Quality (CEQA) documents; 2) transportation impact analyses; 3) historic resource evaluations; and 4) archeological research, treatment, and/or mitigation programs.

The Major Environmental Analysis ("MEA") section of the Planning Department is designated by the San Francisco Administrative Code as the lead agency for all public and private projects within San Francisco and/or under the jurisdiction of San Francisco departments. MEA works closely with other parts of the Planning Department, including the Preservation Team in the Neighborhood Planning (i.e. permit review) Section, to complete environmental review. Based on responses to this Request for Qualifications ("RFQ"), it is the intent of the Planning Department to create pre-qualified pools of consultants from which the Planning Department shall choose prospective contractors for public and privately-sponsored projects requiring complex analyses in the applicable topic area(s) on an as-needed basis as indicated below in Section 2, Scope of Work. These consultant pools may be utilized by the City, at its sole and absolute discretion, for contractor selection and negotiations from September 1, 2010 through August 31, 2012. No pre-qualified or selected Respondent is guaranteed a contract.

The "Respondent" refers to any entity that submits a response to this RFQ. The "Contractor" refers to any Respondent(s) who is selected as a candidate to provide services under this RFQ. The "Respondent partner" refers to a proposing joint venture partner or a subconsultant to the lead Respondent.

The Department has determined that an RFQ solicitation is the most useful and efficient means of establishing a list of appropriate individuals, firms, and/or teams for consultant services. Applications will be evaluated based on qualifications, including experience of the firm and staff, as described in Section IV of this RFQ.

The pools of qualified consultants shall have a term of two (2) years.

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B. Schedule

The anticipated schedule for selecting a consultant is:

<u>Qualification Phase</u>	<u>Date</u>
RFQ is issued by the City	July 8, 2010
Pre-qualification conference	July 20, 2010, 11:00 a.m.
Deadline for submission of written questions or requests for clarification	July 23, 2010
Qualifications due	August 2, 2010

II. Scope of Work

As indicated in Section I, the Planning Department's MEA section is designated as San Francisco's lead agency for conducting environmental impact analyses. For the preparation of Environmental Impact Reports ("EIRs"), Environmental Impact Statements ("EISs"), and other complex environmental documents, MEA executes its responsibilities with the assistance of consultants. Only those consultants selected into the applicable Pool through this RFQ shall be eligible to provide environmental impact analyses, transportation analyses, historical resource evaluations (HREs), and archeological analyses (collected referred to as "environmental analyses" in this RFQ) for the Planning Department as specified in this RFQ. The amounts of work for consultants in the Pool are expected to vary from month to month, depending upon the extent and complexity of projects needing analysis.

The Pool will be used by the Planning Department in the following ways:

- **Department-sponsored projects.** The Department will select from the Pools for preparation of environmental analyses for various public projects as they emerge over the two-year term of the Pools.
- **Other public projects.** The Pools will be made available to other City and County of San Francisco Departments. Other departments may choose to select and contract with consultants from the Pools, but are not required to do so.
- **Privately-sponsored projects.** The Pools from this RFQ will be used as the exclusive basis for the selection of consultants for all proposed private development projects requiring the applicable analyses on an as-needed basis. After establishment of these Pools, selected consultants will be required to contract directly with representatives for proposed private development projects. The Planning Department will, in its sole discretion, select from the Pool a Preliminary Consultant List (PCL) of qualified consultants from which a private developer may select a consultant for any particular project. The PCL selection will be based upon factors including the following:
 1. Character and scope of project, including complexity of the required analysis and any specific technical expertise or resource needs;
 2. Consultant level of performance on other projects;
 3. Fair allocation of work among consultants to promote a robust and diverse Pool (i.e., rotational component to selection);
 4. Any other consultant- or project-specific information bearing on the quality and integrity of the review process.

Consultants selected to perform work from a Pool will be required to work under the supervision of MEA and/or Preservation staff. Prior to final submission, documents prepared by a Consultant shall be reviewed and modified, as necessary, to reflect the independent judgment of Planning Department staff. Consultants selected from a Pool are expected to provide high quality initial submittals that will require minimal revisions by staff and be fully consistent with San Francisco's review process. Consultants selected from a Pool are also expected to be fully and promptly responsive to requests for revisions to initial submittals from staff in order to facilitate finalization of documents without needing more than two draft submittals.

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The Planning Department has established expectations for the content of submittals and for communications between environmental consultants and private project sponsors, which are detailed in Section VIII of this RFQ and in the *Department's Consultant Guidelines for the Preparation of Environmental Review Documents* (<http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=3771>). As a condition of acceptance into the Pool(s), consultants shall be required to adhere to similar performance standards concerning cooperation with the Planning Department, as described in Section VIII of this RFQ. Consultants must expressly include these performance standards in their contracts with project sponsors. Failure to adhere to Planning Department performance standards may be cause for removal from the applicable Pool(s) and/or rejection of noncompliant documents.

III. Submission Requirements

A. Time and Place for Submission of Qualifications

The required number of submittals and related documents (see below) must be received by the Receptionist on the Fourth Floor of the San Francisco Planning Department at 1650 Mission Street, San Francisco no later than 5:00 P.M. Pacific [Daylight] Time, on August 2, 2010. This is a firm deadline and delivery point. Submissions via facsimile (“fax”) or e-mail will not be accepted. Qualifications may be delivered in person or sent via United States Postal Service or other delivery service such as Federal Express to:

Lisa Chau Attn. CP-10/11-001– Area of Expertise: *[environmental, transportation, historic resources, and/or archeology; see below]*
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco CA 94103-2414

Proposers shall submit: eight (8) hard copies of the qualification and one electronic copy on a compact disc ("CD") clearly marked “**Environmental Consultant Services RFQ,**” and one or more of the following indicating the type of work applied for: “**(1) General Environmental Impact Document Preparation**”, “**(2) Transportation Impact Analysis**”, “**(3) Historical Resource Evaluation, and/or**” “**(4) Archeological Resource Evaluation**”; and two hard copies, separately bound, of required HRC Forms in a sealed envelope clearly marked “**Environmental Consultant Services RFQ – HRC FORMS**” to the above location.

Late submissions will not be considered. Postmarks, delivery slips, or other documents will not be considered in judging the timeliness of submissions.

B. Format

Submittals should include the information outlined below under “Content.” If your response is lengthy, please include a Table of Contents. The form of the hard copy submittal is at your discretion (bound, binder, etc...); however you must also submit an electronic version on CD, preferably in PDF format.

C. Content

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

1. Introduction and Executive Summary (up to 3 pages)

Submit a letter of introduction and executive summary of your firm’s skills and experience as related to this RFQ. The letter should be addressed to Bill Wycko, Environmental Review Officer, and must be signed by a person with authority to commit your firm to adhere to the performance standards in this RFQ. Submission of the letter will constitute

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a representation by your firm that your firm will in good faith fulfill the Planning Department's preconditions for inclusion in the Pools.

This section shall also include acknowledgement of the Department's Contract Requirements for Private Projects, described in Section VIII of this RFQ.

2. Firm Qualifications (up to 15 pages)

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

- Name, address, and telephone number of a contact person
- A brief description of your firm;
- A description of the experience and qualifications of relevant team members, including brief resumes if necessary, demonstrating clearly that they meet the minimum professional qualifications outlined in Section IV;
- A description of not more than four projects prepared by your firm that demonstrate experience and ability in the required skills outlined in Section II of this RFQ, including a project summary, client references and telephone numbers, staff members who worked on each project, as well as information regarding adherence to project budget and project schedule. Descriptions should be limited to one page for each project.

3. References (up to 2 pages)

Provide references including the name, address, telephone number, and e-mail address of at least three recent clients (preferably other public agencies).

4. Fee Qualification

The City intends to select consultants for the Pools that MEA determines will provide the best overall program services for a particular project. The City reserves the right to accept consultants for inclusion in the Pools on bases other than the lowest priced services, and to reject any qualifications that are not responsive to this request to disclose fees.

Please provide a fee schedule that includes hourly rates for all team members and key positions. Hourly rates and itemized costs may be used to negotiate contracts that result from this RFQ, and rates assigned to specific staff and for key positions will be considered stable for the term of this RFQ and for the term of resulting contracts.

IV. Evaluation and Selection Criteria

A. Minimum Qualifications

Consultants responding to this RFQ should clearly indicate the areas of expertise for which the firm desires to be pre-qualified for the Pool hereby established, i.e., Environmental, Transportation, Historic, or Archeology, and may be considered for more than one area if so indicated. For example, an environmental consultant with in-house capabilities to provide transportation expertise should indicate each skill area in which the firm can demonstrate experience that could form the basis to be included in a Pool that will be established by this RFQ. Recipients of this RFQ who have working relationships with other consultants in particular specialty skill areas are encouraged to share this RFQ with other consultants; the Pool will be the exclusive basis by which environmental, transportation, historic resources, and archeology consultant services will be performed for both Department-sponsored and private projects for which the Planning Department is the lead agency.

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

1. Environmental Consultants

Consultant responses to this RFQ should document specific experience in San Francisco and/or other comparable jurisdictions in the preparation of complex environmental and related documents. Consultant responses to this RFQ should also demonstrate the availability of experienced and appropriate staff resources to timely address the Planning Department's needs for environmental consultant services. In addition, consultant responses to this RFQ should demonstrate relevant experience in project management for complex environmental documents. Environmental consultant respondents should document an ability to assemble and manage expertise for the full range of environmental topics either in-house or through subconsultants as well as successful coordination and oversight regarding all aspects of a team's work throughout preparation of complex environmental documents.

Consultants prepare all EIRs and many complex Mitigated Negative Declarations in San Francisco. Environmental review documents must address all topics contained in San Francisco's Initial Study/environmental evaluation checklist, available at http://www.sf-planning.org/ftp/files/MEA/Initial_Study_Checklist.doc; the checklist generally mirrors Appendix G of the CEQA Guidelines, but contains some additional topics specific to San Francisco such as analysis of wind and shadow impacts. Environmental documents are prepared in accordance with the Department's *Consultant Guidelines for the Preparation of Environmental Review Documents* (<http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=3771>). Consultants will generally be expected to complete document production, conduct appropriate notification according to City and State requirements, attend hearings, track and record oral and written comments, and respond to comments submitted on environmental review documents and appeals. A proven ability to conduct environmental review in an accurate, adequate, objective, and legally defensible manner is essential.

2. Transportation Consultants

This RFQ is also intended to establish a Pool for transportation consultant services which are needed to perform transportation impact analyses in support of the overall environmental review process of the San Francisco Planning Department. Requisite skills for transportation consultants include consultant familiarity with and ability to use the full range of tools used to analyze effects on traffic conditions at intersections, transit (including delays to operations and ridership capacity constraints), pedestrians (including adequate space and safety), bicycle users and facilities, and loading needs including both goods and services as well as passenger drop-offs and pick-ups at high-use visitor attractors. These technical skills will be applied to a broad range of private and public development projects under the direction of MEA transportation staff. Consultants must possess both technical transportation skills and a strong background in transportation planning in a multi-modal environment. Responses should demonstrate understanding of transportation analysis requirements in San Francisco, including the Department's *Transportation Impact Analysis Guidelines for Environmental Review* (<http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=6753>)

3. Historic Resources Consultants

Historical Resources consultants responding to this RFQ are required to demonstrate, thorough knowledge, skills, and experience, as well as the ability to evaluate eligibility for the California Register of Historical Resources, to assess potential impacts to potential resources, and – where impacts have been identified – to provide mitigation measures to reduce impacts where applicable. The Department may request that consultants prepare Historic Resource Evaluations (HRE's) and Cultural Resource Surveys, create and implement mitigation monitoring and reporting programs, and develop and prepare recommendations for the historic resource component of environmental impact review documents.

Consultants should have a strong understanding of the Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards) and common interpretations and guidelines based on the Standards as well as other relevant historic preservation practices. Consultants should also indicate any specialized area of expertise, such as knowledge of historic landscapes or other particular skill areas.

Consultants must provide information to demonstrate a strong expertise in the development of complex documentation and environmental mitigation measures when impacts have been identified.

Consultants, in addition, are required satisfy the Secretary of the Interior's Professional Qualification Standards for Architectural History and/or Historic Architecture. Special consideration may be given to consultants with a strong background in Historic Preservation Planning.

Responding consultants must demonstrate adequate staff with graduate degrees in Historic Preservation, Planning, Cultural Resources Management, or a closely related field and demonstrated experience in the respective fields.

4. Archeology Consultants

Archeological consultants responding to this RFQ are required to demonstrate a well-established experience and ability to prepare complex archeological documents in support of environmental project analyses and/or to undertake required complex archeological field investigations and documentation in compliance with environmental mitigation programs. More specifically, the archeological consultant must demonstrate the competency and experience to prepare an archeological research design and treatment plan in San Francisco or a comparable California urban setting. Responding archeological consultants, in addition, are required to minimally satisfy the Secretary of the Interior's Professional Qualification Standards for Archaeology, to demonstrate adequate staffing including an historical archeologist and a prehistoric archeologist having graduate degrees in archeology, anthropology, cultural resources management or closely related field and demonstrated experience in the respective fields. In addition, the prehistoric archeologist should have demonstrated expertise and knowledge in San Francisco Bay Area prehistoric archeology. Special consideration may be given to RPA-certified (Register of Professional Archaeologists-certified) archeological consultants. The work of archeological consultants under this RFQ is expected to conform with the Society for California Archaeology *Code of Ethical Guidelines* and the *MEA Consultant Instructions for Archeology* under the direction of the MEA staff archeologist.

B. Selection Criteria

The qualifications will be evaluated by a selection committee comprised of parties with expertise in the relevant topic areas. Qualifications that meet the minimum qualifications will be considered for the Pool.

Note: Proposers that meet the selection criteria will not be ranked within their respective Pool. The Planning Department reserves the right to enter into contract negotiations with any firm from within a Pool on a task-by-task basis.

1. Firm Qualifications (50 points)

- a. Expertise of the firm in relevant consulting services, including topical review in complex urban settings;
- b. Quality of recently completed projects including but not limited to prior work with the City, adherence to schedules, deadlines and budgets;
- c. Experience with similar types of work; and
- d. Results of reference checks.

2. Experience of Assigned Staff (50 points)

- a. Recent experience of staff assigned to the projects that would result from this RFQ, and a description of the tasks to be performed by each staff person;

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- b. Professional qualifications and education, including number of years of relevant professional experience;
- c. Workload, staff availability and accessibility.

V. Pre-qualification conference and Contract award

A. Pre-Qualification Conference

Proposers are encouraged to attend a pre-qualification conference on **July 20, 2010**, at **11:00 a.m.** to be held at **the Planning Department at 1650 Mission Street, Suite 400**. All questions will be addressed at this conference and any available new information will be provided at that time. If you have further questions regarding the RFQ, please contact the individual designated in Section VI.B.

B. Contract Awards from the Pool

When the City is in need of consulting service for public projects, the City will select proposers from the qualified pool with whom City staff shall commence contract negotiations. The selection of any qualification shall not imply acceptance by the City of all terms of the qualification, which may be subject to further negotiations and approvals before the City may be legally bound thereby. If a satisfactory contract cannot be negotiated in a reasonable time, the City, in its sole discretion, may terminate negotiations with the proposer and begin contract negotiations with another proposer from the Pool.

The City retains full discretion to select the best qualified proposer from the Pool for a specific project – public or private – and shall provide notice of such selection to the Pool at large. Alternatively, the City may exercise its discretion to conduct requests for qualifications from within the Pool. And, in the context of private projects, the City may develop an alternative means of providing project sponsors with choice among a subset of qualified environmental consultants from the Pool.

No pre-qualified or selected Respondent is guaranteed a contract as a result of participation in this RFQ.

VI. Terms and Conditions for Receipt of Qualifications

A. Errors and Omissions in RFQ

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

B. Inquiries Regarding RFQ

Inquiries regarding the RFQ and all oral notifications of an intent to request written modification or clarification of the RFQ, must be directed to the appropriate person listed below. E-mail is the preferred method of communication.

- For questions/clarifications regarding the specific services solicited through this RFQ: Bill Wycko, Planning; Tel: 415-575-9048; E-mail: bill.wycko@sfgov.org
- For questions/clarifications regarding the RFQ process and City contract requirements: Lisa Chau, Planning; Tel: 415-575-9042; E-mail: lisa.chau@sfgov.org
- For questions/clarifications regarding Human Rights Commission requirements and forms: Melinda Kanios, Tel: 415-252-2530; E-mail: melinda.kanios@sfgov.org

Inquiries should be sent by 5:00pm on July 23, 2010. Questions and Answers will be compiled and posted by 5:00 p.m. July 27, 2010, on the San Francisco Office of Contract Administration's Bids and Contracts Database at www.sfgov.org/oca.

C. Objections to RFQ Terms

Should a proposer object on any ground to any provision or legal requirement set forth in this RFQ, the proposer must, 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 proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

D. Change Notices

The Department may modify the RFQ, prior to the qualification due date, by issuing Change Notices, which will be posted on the Department's website at <http://www.sf-planning.org/index.aspx?page=1830>. The proposer shall be responsible for ensuring that its qualification reflects any and all Change Notices issued by the Department prior to the qualification due date regardless of when the qualification is submitted. Therefore, the City recommends that the proposer consult the website frequently, including shortly before the qualification due date, to determine if the proposer has downloaded all Change Notices.

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E. Term of Qualification

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

F. Revision of Qualification

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

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

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

G. Errors and Omissions in Qualification

Failure by the Department to object to an error, omission, or deviation in the qualification 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.

H. Financial Responsibility

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

I. Proposer's Obligations under the Campaign Reform Ordinance

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

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

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

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

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Qualification, and requests to be placed on a mailing list do not constitute negotiations.

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

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

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

J. Sunshine Ordinance

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

K. Public Access to Meetings and Records

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

L. Reservations of Rights by the City

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

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

M. No Waiver

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

N. Local Business Enterprise Goals and Outreach

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

1. LBE Subconsultant Participation Goals

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For projects that the City estimates will exceed \$29,000, the City may issue Requests for Proposals or Requests for Quotes to pre-qualified consultants for specific project services. In any event, the Human Rights Commission will determine Local Business Enterprise (“LBE”) subcontracting goals prior to contract negotiations. Pre-qualified consultants selected for contract negotiations will be required to complete Forms 2A and 2B prior to contract award and to comply with all LBE subcontracting requirements. Please refer to San Francisco Administrative Code Chapter 14B and Human Rights Commission Forms 2A and 2B for information concerning the City's LBE program.

Each firm responding to this solicitation shall demonstrate in its response a commitment to use of good-faith outreach to select LBE subcontractors as set forth in S.F. Administrative Code §§14B.8 and 14B.9. LBEs identified as subcontractors must be certified with the San Francisco Human Rights Commission at the time any future proposal is submitted, and must be contacted by the proposer (prime contractor) prior to listing them as subcontractors in the proposal. Any proposal that does not meet the requirements of this paragraph will be non-responsive.

In addition to demonstrating that it will achieve the level of subconsulting participation required by the contract, a proposer shall also undertake and document in its submittal the good faith efforts required by Chapter 14B.8(C)&(D) and HRC Attachment 2, Requirements for Architecture, Engineering and Professional Services Contracts.

Qualifications which fail to comply with the material requirements of S.F. Administrative Code §§14B.8 and 14B.9, HRC Attachment 2 and this 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 subcontractor participation specified in the contract shall be deemed a material breach of contract. Subconsulting goals can only be met with HRC-certified LBEs located in San Francisco.

2. LBE Participation

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

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

If applying for a rating discount as a joint venture: The LBE must be an active partner in the joint venture and perform work, manage the job and take financial risks in proportion to the

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required level of participation stated in the qualification, and must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the LBE joint venture's work shall be set forth in detail separately from the work to be performed by the non-LBE joint venture partner. The LBE joint venture's portion of the contract must be assigned a commercially useful function.

3. HRC Forms to be Submitted with Qualification

a. All qualifications submitted must include the following Human Rights Commission (HRC) Forms contained in the HRC Attachment 2: 1) HRC Contract Participation Form, 2) HRC "Good Faith Outreach" Requirements Form, 3) HRC Non-Discrimination Affidavit, 4) HRC Joint Venture Form (if applicable), and 5) HRC Employment Form. If these forms are not returned with the qualification, the qualification may be determined to be non-responsive and may be rejected. **Forms 1 and 2 are not required at this time. Please see "LBE Subconsultant Participation Goal" above. However, they will be required to be completed prior to contract award by each pre-qualified consultant selected for contract negotiations for any future project.**

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

If you have any questions concerning the HRC Forms, you may call Melinda Kanios, the Human Rights Commission Contract Compliance Officer for the Planning Department at (415) 252-2530.

VII. Contract Requirements for Public Projects

A. Standard Contract Provisions

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

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

B. Nondiscrimination in Contracts and Benefits

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

C. Minimum Compensation Ordinance (MCO)

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

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

Additional information regarding the MCO is available on the web at www.sfgov.org/olse/mco.

D. Health Care Accountability Ordinance (HCAO)

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

E. First Source Hiring Program (FSHP)

If the contract is for more than \$50,000, then the First Source Hiring Program (Admin. Code Chapter 83) may apply. Generally, this ordinance requires contractors to notify the First Source Hiring Program of available entry-level jobs and provide the Workforce Development System with the first opportunity to refer qualified individuals for employment.

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at www.sfgov.org/moed/fshp.htm and from the First Source Hiring Administrator, (415) 401-4960.

F. Conflicts of Interest

The successful proposer will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The successful proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

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

VIII. Contract Requirements for Private Projects

As described above, eligibility for work on privately-sponsored projects or on projects sponsored by a public agency or City department other than the San Francisco Planning Department shall be conditioned on agreement by the qualified Consultant to include specific performance criteria in its performance contracts with private sponsors. The Planning Department requires that consultant contracts for private projects include the following provisions. Violation of this section shall be grounds for removal from the applicable Pool and/or reassignment of a new Contractor to the project at issue, or could affect the inclusion of the Consultant in a future PCL, at the discretion of the Planning Department.

A. Planning Department Minimum Performance Standards

Performance of this contract shall be subject to the following performance standards:

1. Preliminary drafts of deliverables, with the exception of preliminary project descriptions, sponsors' objectives, and descriptions of approvals needed, may not be distributed to project sponsors in advance of submittals to the Planning Department; drafts may be provided to project sponsor simultaneously with submittal to the Department.
2. Along with submission of any document or deliverable, Consultants shall provide a signed Consultant's Checklist with draft submittals, attesting to completeness of review, required content, and verification that requested changes have been incorporated.
3. Consultant must obtain Planning Department approval of the scope of work for consultant services, in writing, prior to signing of the contract by the consultant and project sponsor.
4. Initial preliminary draft documents shall be submitted within six months after work scopes are finalized and subsequent revisions shall be submitted within six months after receipt of Department review comments, subject to exceptions by (1) prior mutual agreement between Department and consultant for unusually complex projects, or (2) delays caused due to project redesign or other factors beyond the control of consultants, for which advance written notification by Consultants is provided.
5. Subject to exceptions in unusual circumstances and by prior written mutual agreement by the Department and Consultant, Consultant will require no more than two complete submittals of preliminary draft documents prior to finalization (not including screencheck version). Any circumstance requiring more than two complete preliminary drafts shall be described in writing by the consultant and/or Planning Department staff and included in the Planning Department's project case file.

IX. Protest Procedures

A. Protest of Non-Responsiveness Determination

Within five working days of the City's issuance of a notice of non-responsiveness, any firm that has submitted a qualification and believes that the City has incorrectly determined that its qualification is non-responsive may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day following the City's issuance of the notice of non-responsiveness. The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local ordinance, procedure or RFQ provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

B. Protest of Contract Award

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

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

C. Delivery of Protests

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

San Francisco Planning Department
Attn. Lisa Chau
1650 Mission Street, Suite 400
San Francisco, California 94103-2479

Appendix B

Standard Forms

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

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

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

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

Item	Form name and Internet location	Form	Description	Return the form to; For more info
1.	Request for Taxpayer Identification Number and Certification http://www.sfgov.org/site/oca_page.asp?id=26550 www.irs.gov/pub/irs-fill/fw9.pdf	W-9	The City needs the contractor's taxpayer ID number on this form. If a contractor has already done business with the City, this form is not necessary because the City already has the number.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102 (415) 554-6702
2.	Business Tax Declaration http://www.sfgov.org/site/oca_page.asp?id=26550	P-25	All contractors must sign this form to determine if they must register with the Tax Collector, even if not located in San Francisco. All businesses that qualify as "conducting business	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102

RFQ for Environmental and Related Consultant Services

Item	Form name and Internet location	Form	Description	Return the form to; For more info
			in San Francisco” must register with the Tax Collector	(415) 554-6702
3.	S.F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits http://www.sfgov.org/site/sfhumanrights_index.asp?id=4584 In Vendor Profile Application	HRC-12B-101	Contractors tell the City if their personnel policies meet the City’s requirements for nondiscrimination against protected classes of people, and in the provision of benefits between employees with spouses and employees with domestic partners. Form submission is not complete if it does not include the additional documentation asked for on the form. Other forms may be required, depending on the answers on this form. Contract-by-Contract Compliance status vendors must fill out an additional form for each contract.	Human Rights Comm. 25 Van Ness, #800 San Francisco, CA 94102-6059 (415) 252-2500
4.	HRC LBE Certification Application http://www.sfgov.org/site/sfhumanrights_page.asp?id=45141 In Vendor Profile Application		Local businesses complete this form to be certified by HRC as LBEs. Certified LBEs receive a bid discount pursuant to Chapter 14B when bidding on City contracts. To receive the bid discount, you must be certified by HRC by the qualification due date.	Human Rights Comm. 25 Van Ness, #800 San Francisco, CA 94102-6059 (415) 252-2500

Where the forms are on the Internet

Office of Contract Administration

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

Human Rights Commission

RFQ for **Environmental and Related Consultant Services**

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

CITY & COUNTY OF SAN FRANCISCO HUMAN RIGHTS COMMISSION



HRC ATTACHMENT 2

Requirements for Architecture, Engineering, & Professional Services Contracts

FOR CONTRACTS \$50,000 AND OVER

PART I. GENERAL

1.01 SAN FRANCISCO ADMINISTRATIVE CODE CHAPTERS 12B AND 14B

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

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

HRC Main Office (415) 252-2500 or LBE Certification Unit (415) 252-2537 or (415) 252-2530

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



1.02 SUBMISSION OF HRC FORMS

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

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

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

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

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

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

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

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



B. HRC Contract Performance Forms

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

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

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

1.03 "GOOD FAITH OUTREACH" REQUIREMENTS

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

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

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

1.04 NON COMPLIANCE AND SANCTIONS

A. Non-Compliance with Chapter 14B

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



awarding authority and attempt to resolve the non-compliance through conference and conciliation.

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

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

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

PART II. RATING BONUS

2.01 APPLICATION

- A. **Eligibility for the LBE Rating bonus:** Certified Small or Micro-LBEs, including certified non-profit organizations, are eligible for an LBE rating bonus if the LBE is HRC certified in the type of work that is called out by the Contract Awarding Authority. Under certain circumstances, SBA LBE's are



eligible for an LBE rating bonus. A proposer that has a certification application pending, that has been denied certification, that has had its certification revoked or that is in the process of appealing an HRC denial or revocation at the date and time the proposal is due is not an LBE and is not eligible to receive the rating bonus even if the firm is later certified or ultimately prevails in its appeal.

B. Application of the Rating bonus: The following rating bonus shall apply at each stage of the selection process, i.e., qualifications, proposals, and interviews:

1. Contracts with an Estimated Cost in Excess of \$10,000 and Less Than or Equal To 400,000. A 10% rating bonus will apply to any proposal submitted by an HRC certified Small or Micro-LBE. Proposals submitted by SBA-LBEs are not eligible for a rating bonus.

2. Contracts with an Estimated Cost in Excess of \$400,000 and Less Than or Equal To \$10,000,000. A 10% rating bonus will apply to any proposal submitted by an HRC certified Small or Micro-LBE ...Pursuant to Section 14B.7(E), a 2% rating bonus will be applied to any proposal from an SBA-LBE, except that the 2% rating bonus shall not be applied at any stage if it would adversely affect a Small or Micro-LBE proposer or a JV with LBE participation.

3. Contracts with an Estimated Cost In Excess of \$10,000,000 and Less Than or Equal To \$20,000,000. A 2% rating bonus will apply to any proposal submitted by an SBA-LBE..

4. The rating bonus for a Joint Venture (“JV”) with LBE participation that meets the requirements of Section 2.02 below is as follows for contracts with an estimated cost of in excess of \$10,000 and Less Than or Equal to \$10,000,000:

a. 10% for each JV among Small and/or Micro LBE prime proposers.

b. 5% for each JV which includes at least 35% (but less than 40%) participation by Small and/or Micro-LBE prime proposers..

c. 7.5% for each JV that includes 40% or more in participation by Small and/or Micro-LBE prime proposers.

d. The rating bonus will be applied by adding 5%, 7.5%, or 10% (as applicable) to the score of each firm eligible for a bonus for purposes of determining the highest ranked firm. Pursuant to Chapter 14B.7(F), SBA-LBEs are not eligible for the rating bonus when joint venturing with a non LBE firm. However, if the SBA-LBE joint ventures with a Micro-LBE or a Small-LBE, the joint venture will be entitled to the joint venture rating bonus only to the extent of the Micro-LBE or Small-LBE participation described in Section 2.01B.4b. and c. above.

5. A 10% rating bonus for HRC LBE certified non-profit agencies for contracts estimated in excess of \$10,000, but less than or equal to \$10,000,000.

C. The Rating Bonus for Small or Micro-LBEs or JVs does not apply for contracts estimated by the Contract Awarding Authority to exceed \$10 million. The rating bonus for SBA-LBEs does not apply for contracts estimated by the Contract Awarding Authority to exceed \$20 million.

2.02 JOINT VENTURE/PRIME ASSOCIATION

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



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

EXAMPLE:

Step 1. Calculate total JV partner work:

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

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

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



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

Total Small and/or Micro- LBE JV %	27.5%	÷	Total JV %	60%	=	45.8%
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The Small and/or Micro-LBE JV partner’s participation is 45.8%. The JV is therefore eligible for a 7.5% rating bonus.

PART III SUBCONSULTANT PARTICIPATION

3.01 SUBCONSULTANT PARTICIPATION GOAL

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

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

For a directory of certified LBEs, please go to:

http://sf-hrc.org/ftp/uploadedfiles/sfhumanrights/directory/vlistS_1.htm.

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

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

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

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

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



E. Determination and calculation of LBE subconsultant participation:

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

EXAMPLE:

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

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

EXAMPLE:

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

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

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

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



**PART IV EMPLOYMENT NON-DISCRIMINATION AND ECONOMICALLY
DISADVANTAGED WORKFORCE HIRING PROVISIONS**

4.01 GENERAL

As a condition of contract award, Consultants and subconsultants shall comply with the nondiscrimination in employment provisions required by Chapter 12B of the Administrative Code and the hiring of economically disadvantaged persons as required by the City's First Source Hiring Program, Chapter 83 of the Administrative Code.

4.02 NONDISCRIMINATION PROVISIONS

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

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

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

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

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

D. Complaints of Discrimination after Contract Award

- 1. A complaint of discrimination in employment initiated by any party after contract award shall be processed in accordance with the HRC Rules of Procedure, adopted pursuant to Chapter 12B of the San Francisco Administrative Code.
- 2. A finding of discrimination may result in imposition of appropriate sanctions, including:



- a. There may be deducted from the amount payable to the consultant or subconsultant under this contract a penalty of \$50 for each person for each calendar day the person was discriminated against in violation of the provisions of the contract.
- b. The contract may be canceled, terminated or suspended in part by the contract awarding authority.
- c. The consultant, subconsultant or vendor may be determined ineligible to perform work or supply products on any City contract for a period not to exceed two years.

4.03 TRAINEES – FIRST SOURCE HIRING PROGRAM

A. **Trainee Requirements:** Consultants are required to comply with the City's First Source Program, Administrative Code Section 83, which fosters employment opportunities for economically disadvantaged individuals. Consultants are required to notify the First Source Program of all open, entry-level positions and consider all program referrals fairly and equally. In addition the City requires consultants to hire a minimum number of professional service trainees in the area of the consultant's expertise. These hires count toward the First Source Hiring requirements. Trainees may be obtained through the City's One Stop Employment Center, which works with various employment and job training agencies/organizations or other employment referral source.

Number of Trainees	
Project Fees	To Be Hired
\$0 – \$499,999	0
\$500,000 – \$899,999	1
\$900,000 – \$1,999,999	2
\$2,000,000 – \$4,999,999	3
\$5,000,000 – \$7,999,999	4
\$8,000,000 – \$10,999,999	5
\$11,000,000 – \$13,999,999	6
(> = \$14M, for each additional \$3 million in consultant fees, add one additional trainee)	

- 2. The trainee must be hired by the prime consultant or by any subconsultant on the project team.
- 3. No trainee may be counted towards meeting more than one contract goal.
- 4. A trainee must meet qualifications for enrollment established under the City's First Source Hiring Program as follows:
 - (i) "Qualified" with reference to an economically disadvantaged individual shall mean an individual who meets the minimum bona fide occupational qualifications provided by the prospective employer to the San Francisco Workforce Development System in the job availability notices required by the Program, and
 - (ii) "Economically disadvantaged individual" shall mean an individual who is either: (1) eligible for services under the Workforce Investment Act of 1988 (WIA) (29 U.S.C.A 2801 et seq.), as determined by the San Francisco Private Industry Council; or (2) designated "economically disadvantaged" for the First Source Hiring Administration, as an individual who is at risk of relying upon, or returning to, public assistance.



5. On-the-job Training (to be provided by the consultant): The consultant shall hire the trainee on a full-time basis for at least 12 months or on a part-time basis for 24 months, with prior approval offering him/her on-the-job training which allows the trainee to progress on a career path.
6. A summary of a job description and training for the trainee with the rate of pay should be submitted for approval.
7. The trainee's commitment does not require that he/she is used only on this project, but also on other projects under contract to the Architect, Engineering, or Professional firm, which is appropriate for the trainee's skill development.



FORM 2A: HRC CONTRACT PARTICIPATION FORM

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

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

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

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

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

Owner/Authorized Representative (Signature): _____ Date: _____

Print Name and Title: _____

** MBE = Minority Business Enterprise, WBE = Women Business Enterprise, OBE = Other Business Enterprise. See HRC website http://sf-hrc.org/ftp/uploadedfiles/sfhumanrights/directory/vlist_1.htm for each firm's status.



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

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

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

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

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

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

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

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



FORM 2B: "GOOD FAITH OUTREACH" REQUIREMENTS FORM

This "Good Faith Outreach" form, along with the required supporting documentation must be completed and submitted per the instructions in this form EVEN IF the LBE subconsulting participation goal has been met (*Section 14B.8 of the San Francisco Administrative Code*). *Proposers* may obtain a list of certified LBEs from the HRC website: http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlists_1.htm

SECTION A

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

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

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

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

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

SECTION B

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

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

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



<p>3. Did your firm identify and select work types (as categorized in HRC’s LBE Directory) to meet the LBE subconsultant participation goal? If so, please identify the work types below:</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p><input type="checkbox"/> Yes (10 points)</p>	<p><input type="checkbox"/> No (0 Points)</p>
<p>4. Did your firm contact LBE firms (LBE firms include MBEs, WBEs and OBEs) for the identified work types (see #3 above), not less than 10 calendar days prior to the due date of the proposal? If so, <u>please include documentation (i.e. phone logs, emails, faxes, etc.) to verify that contacts were made.</u> The purpose of contacting LBE firms is to provide notice of interest in proposing for this project.</p> <p>A proposer who contacts those LBE firms certified in the identified work types, not less than 10 calendar days prior to due date of the proposal, will receive up to 45 points. If a proposer does not comply with paragraphs a. & b. below, one point will be deducted for each LBE firm within each identified work type that is not contacted.</p> <p>a. If there are less than 25 firms within an identified work type, a proposer should contact all of them.</p> <p>b. If there are 25 or more firms within an identified work type, a proposer should notify at least 25 firms within such identified work type.</p> <p>If a proposer does not contact any LBE firms, the proposer will receive no points. When contacting LBEs, you should provide adequate information about the project. If the City gave public notice of the project less than 15 calendar days prior to the proposal due date, the allocation of points above still applies, except that the proposer may contact those LBE firms certified in the identified work types less than 10 calendar days prior to the due date of the proposal.</p>	<p><input type="checkbox"/> Yes (Up to 45 points)</p>	<p><input type="checkbox"/> No (0 Points)</p>
<p>5. Did your firm follow-up and negotiate in good faith with interested LBEs? If so, <u>please include documentation (i.e. phone logs, emails, faxes, etc.) to verify that follow-up contacts were made.</u> If applicable, your follow-up contact with interested LBEs should provide information on the City’s bonding and financial assistance programs.</p> <p>For each interested LBE firm that the proposer does not follow-up with, a point will be deducted.</p> <p>A proposer who does not perform any follow-up contact with interested LBEs will receive no points.</p> <p>*"Interested LBE" shall mean an LBE firm that expresses interest in being a subconsultant to the proposer.</p>	<p><input type="checkbox"/> Yes (Up to 20 points)</p>	<p><input type="checkbox"/> No (0 Points)</p>
<p>6. A proposer shall submit the following documentation with this form:</p> <p>(1) Copies of all written proposals submitted, including those from non-LBEs;</p> <p>(2) If oral proposals were received, a list of all such proposals, including those from non-LBEs. The work type and dollar amounts for each such proposal must be specified; and</p> <p>(3) A full and complete statement of the reasons for selection of the subconsultants for each work type. If the reason is based on relative qualifications, the statement must address the particular qualification at issue.</p>		



SECTION C

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

 % of work

SECTION D

Contract Name: _____

Contract No.: _____

Signature of Owner/Authorized Representative: _____

Owner/Authorized Representative (Print): _____

Name of Firm (Print): _____

Title and Position: _____

Address, City, ZIP: _____

E-mail: _____

Date: _____



FORM 3: HRC NON-DISCRIMINATION AFFIDAVIT

1. I will ensure that my firm complies fully with the provisions of Chapter 14B of the San Francisco Administrative Code and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
2. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the Human Rights Commission shall be payable to the City and County of San Francisco upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any contract with the City and County of San Francisco.
3. I declare and swear under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

Signature of Owner/Authorized Representative: _____

Owner/Authorized Representative (Print) _____

Name of Firm (Print) _____

Title and Position _____

Address, City, ZIP _____

Federal Employer Identification Number (FEIN): _____

Date: _____



FORM 4: HRC JOINT VENTURE FORM

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

SECTION 1: GENERAL INFORMATION

1. Name of Contract or Project:

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

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

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

4. The management plan must include the following information:

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

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

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

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

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

Step 1. Calculate total JV partner tasks.

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



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

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

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

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

JOINT VENTURE PARTNERS MUST SIGN THIS FORM

Owner/Authorized Representative (Signature)	Owner/Authorized Representative (Signature)
Name and Title (Print)	Name and Title (Print)
Firm Name	Firm Name
Telephone Date	Telephone Date



FORM 5: HRC EMPLOYMENT FORM

This form is to be submitted with the proposal.

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

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

NAME OF FIRM	NAME OF EMPLOYEE	PROJECT ROLE	RACE	SEX

Indicate the Number of disadvantaged individuals that will be hired as on -the-job-trainees by the entire project team. See §4.03 of HRC Attachment 2.

a. Estimated Project Fee: \$ _____

b. HRC on-the-job training goal: _____

c. Number of on-the-job-trainees that will be hired by the project team _____

d. If less than HRC goal, explain: _____

e. Length of training: _____ If less than 12 months, explain _____

Sign below including each joint venture partner.

Owner/Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone Date

Owner/Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone Date



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

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

Identify LBE Goal of this contract: %

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



FORM 9: HRC PAYMENT AFFIDAVIT

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

TO: Project Manager/Designee

COPY TO: HRC Contract Compliance Officer

Firm: _____

Date: _____

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

Contract Number: _____ Contract Name: _____

Contract Awarding Department: _____

Progress Payment No.: _____ Period Ending: _____

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

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

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

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

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

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name (Print) Title

Name (Print) Title

Firm Name

Firm Name

Telephone Date

Telephone Date



FORM 8: HRC EXIT REPORT AND AFFIDAVIT

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

TRANSMITTAL

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

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

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

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

SECTION 2. Please check one:

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

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

SECTION 3.

To be signed by the LBE Subconsultant or vendor:

- I agree I disagree

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

Owner/Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone

Date



SECTION 4.

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

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

Owner/Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone

Date



FORM 10: HRC CONTRACT MODIFICATION FORM

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

Name of Project/Contract Title: _____

Original Contract Amount: _____

Contract Amount as Modified to Date: _____

Amount of Current Modification Request: _____

REQUIRED ATTACHMENTS:

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

Owner/Authorized Representative (Signature)

Name (Print) Title

Firm Name

Telephone Date

Owner/Authorized Representative (Signature)

Name (Print) Title

Firm Name

Telephone Date

Appendix C

Model Agreement

NOTE: This attachment applies only to those applicants that wish to be considered for any contracts with the City and County of San Francisco. Do not complete this attachment if you are not interested in contracting with the City under this RFQ process.

Respondents that are interested in contracting with the City, if selected for a contract(s), will be required to enter into such contract(s) substantially in the form of the City and County of San Francisco Standard Professional Services Agreement (P-500), as attached.

HOW TO RESPOND TO THIS ATTACHMENT

Respondents that are interested in contract opportunities with the City and County of San Francisco and do not submit proposed changes will be assumed to accept all of the City's terms and conditions and **shall submit one copy of a statement to that effect, in lieu of submitting proposed changes as part of your response submission** (your response copies do not need to include this statement).

Respondents wishing to negotiate modification of other terms and conditions must include with their submission one copy of the City's Agreement referring to the specific portion of the Agreement to be changed, and show proposed changes (deleted sections with a ~~strikeover~~ and added sections in underline type). (Your response copies do not need to include this Attachment.)

The City's selection of any Respondent who proposes changes to the City's Agreement terms shall not be deemed as acceptance of the Respondent's proposed changes.

Failure to timely execute the contract(s), or to furnish any and all certificates, bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another firm and may proceed against the original selectee for damages.

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

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

Agreement between the City and County of San Francisco and

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

Recitals

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

WHEREAS, a Request for Proposal (“RFP”) was issued on _____, 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:

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 _____ to _____.

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

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

5. Compensation. Compensation shall be made in monthly payments on or before the _____ day of each month for work, as set forth in Section 4 of this Agreement, that the _____, 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 _____. 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 _____ 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.

[If the contract will involve the use of subcontracts to meet LBE goals (per RFP), then the following paragraph is also included:]

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

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

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

[Contractors that must be State-licensed as professionals to perform services, i.e., architects, engineers, certified public accountants, etc., shall provide professional liability insurance also known as errors-and-omissions coverage. If the contractor is such a professional, then (4) is included. If the contractor is not such a professional, then (4) is omitted.]

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.

[If the Contractor is going to use any subcontractor(s) to perform the job under the Agreement, then j. is included:]

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.

[Version 1 – If the Contractor is NOT a design professional (an architect, a landscape architect, or an engineer):]

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

[Version 2 – If the Contractor IS a design professional (an architect, a landscape architect, or an engineer):]

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

Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

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

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

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

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

Section 19 is optional: it may be deleted if there are no time-sensitive milestones for the contractor's performance, or if the department concludes that liquidated damages are not required under the particular circumstances of the contract.

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 _____ day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by Purchasing.

20. Default; Remedies

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

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

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

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

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

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

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

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and

regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

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

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

- 1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- 2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- 3) Terminating all existing orders and subcontracts.
- 4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- 5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- 6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- 7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

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

- 1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- 2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services

and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

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

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

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

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

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

22. Rights and Duties upon Termination or Expiration

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

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

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

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

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

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

To City: ATTN _____
 SAN FRANCISCO PLANNING DEPARTMENT
 1650 MISSION ST STE 400
 SAN FRANCISCO CA 94103-2479

 E-mail: _____@sfgov.org
 Fax: 415-558-6409

To Contractor: ATTN _____

 E-mail: _____
 Fax: _____

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.

[If the contract will involve the use of subcontracts to meet LBE goals (per RFP), then (2), (3) and (4) are included:]

2) **Subcontracting Goals.** The LBE subcontracting participation goal for this contract is _____% 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.

[If contract is for \$50,000 or more, the requirements of S.F. Admin. Code Chapter 83 apply to: (a) entry level positions for work performed by a contractor in the City; (b) entry level positions for work performed on the contract in Alameda, San Francisco or San Mateo counties; (c) entry level positions for work performed on the contract on property owned by the City; and (d) entry level positions for work done under a permit authorization on a development project in the City.]

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 may be 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.

[If the contract amount is \$50,000 or more, then the following sentence is included:]

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.

The following is included if the contract will involve the contractor or subcontractors providing services involving direct supervision of minors Supervision includes oversight responsibilities at City parks, playgrounds, recreational centers or beaches. Otherwise, §55 should read, "55. Left blank by agreement of the parties. (Supervision of minors)

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.

[The following is included if Contractor is providing (1) insurance or insurance services, (2) financial services, or (3) textiles, unless the contractor falls within an exception (see S.F. Admin. Code Section 12Y.3):]

60. Slavery Era Disclosure

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

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

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

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

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

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

CITY

CONTRACTOR

Recommended by:

John Rahaim
Director of Planning
San Francisco Planning Department

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

Approved as to Form:

Dennis J. Herrera
City Attorney

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

By: _____
Deputy City Attorney

Approved:

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

Name: _____
Title: _____
Address: _____
City/State/Zip: _____

City vendor 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

Contractor agrees to perform the following services:

2. Reports

Contractor shall submit written reports as requested by the San Francisco Planning Department. Format for the content of such reports shall be determined by the San Francisco Planning 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 San Francisco Planning Department will be _____.

Appendix B
Calculation of Charges

Contractor: _____

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.