

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CONTRACT ADMINISTRATION
PURCHASING
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685

FIRST AMENDMENT
Of the Maintenance of City Equipment Contract (RFP No. 93400)

THIS AMENDMENT (this "Amendment") is made as of **May 12, 2005**, in San Francisco, California, by and between **Specialty Underwriters LLC** ("Contractor"), and the **City and County of San Francisco**, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

(a) **Agreement.** The term "Agreement" shall mean the Agreement dated **September 15, 2003** between Contractor and City.

(b) **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

(a) **Section 16.** Section **16, Insurance**, of the Agreement currently reads as follows:

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; and

2. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

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. All policies shall provide 30 days' advance written notice to City of cancellation mailed to the following address:

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

d. 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.

e. 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.

f. 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.

g. Before commencing any operations under this Agreement, Contractor must furnish to City certificates of insurance, and additional insured policy endorsements, in form and with insurers satisfactory to City, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon City request.

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

Such section is hereby amended in its entirety to read as follows:

16A. Insurance – Contractor

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" Section of this Agreement, Contractor shall 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; and

2. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

4. Contractor shall provide Property and Equipment Insurance. Contractor shall provide or cause its subcontractor to provide insurance covering property or equipment owned by City and under repair, or under the care custody or control of Contractor or Contractor's subcontractor under this Agreement, in an amount not less than the greater of the cost of repair or replacement of the specific equipment (the "Property and Equipment Insurance").

b. Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Property and Equipment Insurance policies must provide the following:

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. All policies shall provide 30 days' advance written notice to City of cancellation mailed to the following address:

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

d. 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.

e. 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.

f. 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.

g. Before commencing any operations under this Agreement, Contractor shall do the following: (a) 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 in sections 16A, and (b) furnish complete copies of policies promptly upon City request.

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

i. Contractor shall require all subcontractors to name the City and County of San Francisco, its officers, employees and agents as additional insureds to general liability and automobile liability policies as required and as designated under coverage required of Contractor. "Subcontractor" means any person or entity who performs any services, for contractor for work under this Agreement pursuant to a subcontract or other arrangement with contractor.

16B. Insurance – Subcontractor

a. Without in any way limiting Contractor's liability pursuant to insurance or indemnification in this Agreement, Contractor shall require each of its subcontractors to maintain during the term of their subcontracts or other agreement with contractor to provide services pursuant to this Agreement insurance in the following amounts and coverages:

1. Workers' Compensation in statutory amounts with Employer's Liability with limits not less than \$1,000,000 per accident, injury or illness.

2. Commercial General Liability insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for bodily injury, property damage, including contractual liability, personal injury, products and completed operations.

3. Commercial Automobile Liability insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for bodily injury, property damage, including owned, non-owned and hired automobile coverage as applicable.

b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

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. All policies shall provide 30 days' advance written notice to City of cancelled mailed to the following address:

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

d. Should any of the required insurance be provided under a claims-made form, the subcontractor 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.

e. 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.

f. Before subcontractor commences any operations under its subcontract or other arrangement with Contractor for this Agreement, Contractor shall do the following: (a) furnish to City subcontractor's 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 in sections 16B, and 16A.a.4. if coverage is not provided by Contractor, and (b) furnish complete copies of subcontractor's policies promptly upon City request.

g. Approval of the insurance by City shall not relieve or decrease the liability of subcontractor hereunder.

h. Notwithstanding the preceding subsections of Section 16B, subcontractors may obtain alternative forms of coverage to the insurance required above; provided Contractor obtains the advance written approval of the Risk Manager and Office of Contract Administration for such coverage.

(b) Section 17. Section 17 is hereby added to the Agreement, as follows:

17. Warranties

Contractor shall require that all subcontractors warrant all goods provided under this Agreement shall be merchantable and fit for the intended purpose and that all services provided under this Agreement shall conform with all descriptions as well as specifications of manufacturer. Contractor shall further require that services shall be rendered in good and workmanlike manner by skilled personnel having any requisite license, certification and training required to perform the service, and shall be free from all defects. The performance of all warranties shall survive and extend beyond delivery, installation or repair as to each good or service for a period of 90 days from the date of delivery, installation or repair unless a longer warranty period is called for in any writing, including and without limitation, specifications, instructions, schematics or any other documentation. Warranty periods shall begin upon the completion of such services and delivery shall not occur until the completion of such services.

Contractor shall require each subcontractor to name City as the third party beneficiary to any warranty issued to Contractor for any goods or services including, but not limited to, maintenance of equipment performed pursuant to this Agreement. Contractor shall identify, monitor, and ensure that all warranties identify City as a third party beneficiary. Contractor shall provide written reports as requested by City identifying each warranty, and reporting on what each warranty covers and the remaining period for which the coverage is available.

(c) Section 18. Section 18 Default: Remedies of the Agreement currently reads as follows:

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, 10, 16, 21, 22, 29, and 47.

(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.

Such section is hereby amended in its entirety to read as follows:

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, 10, 16, 16A, 16B, 21, 22, 29, 47, and 48.

(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.

(d) Section 20. Section 20 Rights and Duties Upon Termination or Expiration of the Agreement currently reads as follows:

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8, 10, 12, 14 through 16, 21, 27, 29 through 32, and 46.

b. Subject to the immediately preceding subsection (a), 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.

Such section is hereby amended in its entirety to read as follows:

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8, 10, 12, 14 through 16, 16A, 16B, 21, 27, 29 through 32, 46, and 47.

b. Subject to the immediately preceding subsection (a), 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.

(e) Section 23. Section 23 Notification of Limitation on Contributions of the Agreement currently reads as follows:

This paragraph applies if this contract is in excess of \$50,000 over a 12-month period or less and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal services and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving: (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any

elective office for a period of up to six years from individuals and entities who are “public benefit recipients” of the contract. Public benefit recipients of the contract are: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Contractor understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Contractor except as provided under the Conduct Code. Contractor agrees to notify any other individuals or entities that may be deemed “public benefit recipients” under the Conduct Code because of this contract. Upon request, Contractor agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official’s compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Contractor with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City or Contractor of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

Such section is hereby amended in its entirety to read as follows:

23. 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 or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer of the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until the later of either (1) the termination of negotiations for such contract or (2) three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

(f) Section 24. Section 24 Notices to the Parties of the Agreement currently reads as follows:

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 addressed as follows:

To City: Lynn Khaw, Principal Administrative Analyst
City and County of San Francisco
Office of Contract Administration
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685
lynn.khaw@sfgov.org
Fax (415) 554-4337

To: Contractor: Peter C. Vincer, Jr., President
Technology Management Group
7280 S. 13th Street, Suite 202
Oak Creek, WI 53154
pvincer@tmg-info.com
Fax (414) 570-3531

Any notice of default must be sent by registered mail.

Such section is hereby amended in its entirety to read as follows:

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 addressed as follows:

To City: Lynn Khaw, Principal Administrative Analyst
City and County of San Francisco
Office of Contract Administration
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685
lynn.khaw@sfgov.org
Fax (415) 554-4337

To Contractor: Robert K. Saull, Executive Vice President & CPO
SU Group LLC
9667 South 20th Street
Oak Creek, WI 53154
bsaull@su-group.com
Fax (414) 216-1050

Any notice of default must be sent by registered mail.

(g) Section 28. Section 28 Conflict of Interest of the Agreement currently reads as follows:

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of City's Charter and §87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

Such section is hereby amended in its entirety to read as follows:

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.

(h) Section 44. Section 44 Prohibition on Political Activity with City Funds of the Agreement currently reads as follows:

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.

Such section is hereby amended in its entirety to read as follows:

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.

(i) Section 48. Section 48 is hereby added to the Agreement, as follows:

48. Nondisclosure of Private Information

As of March 5, 2005, Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

(a) Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

(i) The disclosure is authorized by this Agreement;

(ii) The Contractor received advance written approval from the Contracting Department to disclose the information; or

(iii) The disclosure is required by law or judicial order.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(d) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

(j) Appendix A and Appendix B. Appendix A, Services to be Provided by Contractor, and Appendix B, Calculation of Charges, of the Agreement currently read as follows:

1. Description of Services

Contractor agrees to perform the following services:

A. The Maintenance Program

Contractor shall design and plan an equipment maintenance program (the "Maintenance Program") which includes the Contractor as the program manager, and which shall satisfy each requirement of Section II of City's Request for Proposal, No. 93400, for an Equipment Maintenance Master Agreement, dated April 9, 2003 (the "RFP"), which are hereby incorporated in this Agreement. Except as otherwise stated below during the Maintenance Program, Contractor shall be entirely responsible for making arrangements for the maintenance of equipment and actual maintenance of equipment, including, but not limited to, processing invoices and paying any vendor that maintained equipment. Maintenance for purposes of this Agreement shall include maintenance and repairs to equipment.

B. Creating the Maintenance Program

Contractor shall perform the following tasks to create the Maintenance Program:

(1) Contractor shall provide equipment maintenance assessments of all types of City equipment, including, but not limited to, elevators, facility equipment, security equipment, computers, and telecommunication and office equipment. The equipment maintenance assessments shall include, but not be limited to, the assessments of the following: model, make, age, location of equipment, start and end dates of current contract, current service requirements, current cost of maintenance, and cost to maintain with the Contractor.

(2) Contractor shall evaluate and determine the equipment maintenance needs of the City departments, starting with Department of Telecommunication and Information Services (DTIS) and the Department of Public Health (DPH), by gathering detailed information on each piece of equipment, interviewing each department's liaison and staff, reviewing the City's existing equipment maintenance contracts, auditing any related accounts payable records or any other relevant documents. Except as otherwise stated in this Agreement, Contractor also shall perform the tasks identified in Appendix A of Contractor's proposal ("Contractor's Appendix A") submitted in response to the RFP, commencing with the tasks identified under "Program Announcement and Explanation." For purposes of proposing and creating the Maintenance Program, Contractor shall maintain the schedule in Contractor's Appendix A; except that the start date of the Program Announcement and Explanation shall be no later than October 1, 2003, and each date of completion in Contractor's Appendix A is hereby extended by ninety-eight (98) days or as otherwise agreed to by the parties in writing.

(3) After completing the services required in paragraphs (1) and (2) of this Section B, Contractor shall provide the following:

- i. A proposal with detail supporting records that shows the savings that can be achieved by placing the equipment under the Maintenance Program.
- ii. A report of the equipment that are still under maintenance or service warranties.
- iii. A report of the equipment service contract's start and end dates, and in consultation with the City Attorney's Office, a report on contracts that may be terminated by the City at will and contracts that do not provide for termination at will by the City.

(4) After analyzing Contractor's proposal and reports, the City will determine the equipment that City would like to place on the Maintenance Program. Contractor will then perform the following:

- Inventory and tag the equipment to identify model, make, location, age, and other information that the contractor deems appropriate (the "inventory and tagging information"), and enter that data into Contractor's computer system and website so that the information is readily available to Contractor and City.
- Prepare separate reports for each department containing the inventory and tagging information for equipment of that department (the "inventory and tagging reports").
- Identify in each report on inventory and tagging information, for each piece of equipment, the vendor that the City selected to use for the maintenance of the equipment (the "preferred service vendor") or identify on a separate written report the preferred service vendor for each piece of equipment in the maintenance program.
- Identify the proposed maintenance coverage and period of maintenance for each piece of equipment, including the start and end dates and include this information in each inventory and tagging reports.
- Verify inventory and tagging information with department personnel.
- Edit each report on the inventory and tagging information to reflect the changes required by the department and resubmit the report to the department.
- Present each department with its final reports on inventory and tagging information.

(5) Contractor shall assist City, on request, with the cancellation of the current equipment maintenance contracts. All cancellations are subject to the City's Charter and Municipal Code, and shall be subject to any required City approvals, including, but not limited to, approval as to form by the City Attorney's Office.

(6) Contractor shall be responsible for entering into any arrangements required to ensure that preferred service vendors will enable Contractor to provide the service required by this Agreement, including, but not limited to, any contracts with the vendors. City will not have any contractual relationship with the preferred service vendors, unless expressly created by written agreement.

(7) Contractor shall provide the services in this Section B without charge to the City.

C. Implementation of the Maintenance Program

(1) Contractor shall train City personnel on the use of its web site, currently www.tmg-info.com, to enable City personnel to make the most efficient use of the Maintenance Program. The department's liaison will inform the Contractor as to when, where and how many persons shall be trained.

(2) Contractor shall provide the City with the highest quality program and the best personnel to handle the needs of the City. Contractor's personnel assigned to this project shall be the persons identified in section 4.b of the Contractor's proposal. Contractor shall obtain City's advance approval for any substitutions to the project team. Contractor may increase the size of its team if necessary; provided Contractor receives City's advance approval of new additional team members. Each team member shall have significant experience with or be knowledgeable about municipal government equipment

needs and understand the types of equipment that will be part of the program. Increases in the size of the team shall not affect the price of this Agreement.

(3) Contractor shall use a state of the art computer system for the administration and implementation of the Maintenance Program.

(4) To obtain maintenance services, City staff shall be required to make only one telephone call to Contractor's Central Dispatch for maintenance of equipment. Contractor's dispatchers shall confirm with the City personnel requesting the service (the "requester") the piece of equipment to be repaired, its location and the reported problem. The dispatcher shall then provide a reference number to the requester. The dispatcher shall immediately call the preferred service vendor to initiate the service call, and obtain the estimated time of arrival (ETA) of the preferred service vendor to the equipment and report the ETA to the requester by telephone, or by e-mail or facsimile if requested. The Contractor shall require preferred service vendors to call the Contractor upon arrival at the location of equipment, to confirm that they have met with City staff about the requested service, and to report the time of their completion of service. The Contractor shall also require that the preferred service vendors send invoices and service reports directly to the Contractor.

(5) Contractor shall review at least annually, or more frequently if requested by the City, each maintenance servicing of each piece of equipment to ensure that the preferred service vendors are providing service of the highest quality to the City. Within 30 days of the completion of each review, Contractor shall create a written record of the results of its review, which shall be available to the City on request. Contractor shall maintain the written records and make such records available to City for a period ending not sooner than one (1) year after the termination or expiration of this Agreement. For each Service call, Contractor shall also monitor how closely to the ETA preferred service vendors arrive at the site of equipment. If a preferred service vendor is not responding in a timely manner, Contractor shall report the preferred service vendor to the City and shall consult with the City to determine if the preferred service vendor should be replaced.

(6) Contractor shall submit a report to the City if a piece of equipment requires unusual maintenance work. The report shall describe the required maintenance and explain why the work required is unusual for the type of equipment.

(7) Contractor shall provide the management reports, 24 hours a day, 7 days a week on its web site at www.tmg-info.com. The management reports shall include without limitation, the inventory and tagging reports, results of the maintenance service review, and any unusual maintenance work. Contractor shall provide the departments printed management reports, on request, and at the frequency requested by the City. Contractor shall also customize its reports at the request of the City.

(8) Contractor shall be responsible to preferred service vendors for disputes that a preferred service vendor raises relating to servicing of City's equipment and shall handle such disputes.

(9) City shall identify in writing City personnel who shall be authorized to access Contractor's web site (the "authorized users"). Each authorized user shall have his or her own login and password for access to the web site. Each authorized user shall have the ability to view the status of a service call to the Contractor's dispatcher, view or print information about each piece of equipment, including but not limited to, when it was last service, what kind of maintenance was performed, number of times service calls have been made, and when service was performed.

(10) Contractor acknowledges and agrees that data security and related security measures are critical to the City. Contractor shall ensure the security of data and reports on City's equipment, and shall implement appropriate security measures on its computer system and website to protect that information, including, but not limited to the following:

- i. Virus Protection-The leading virus protection software, and current updates, shall be installed.
- ii. Passwords- System accounts shall be managed and maintained by a System Administrator who shall protect the confidentiality of the account information.
 - iii. Each authorized user shall have a designated level of security that will provide access to specific information on Contractor's website. City shall specify the type of information that are reasonable to the authorized user at each level of security in writing.
- iv. Contractor shall maintain hardware and software back-up systems for its computers and internet web site. Contractor shall back-up data and other electronic information related to City equipment hourly, if requested by City, but in no event less frequently than once every 24 hours. In addition, Contractor shall have redundant hardware and software that would enable its systems to continue functioning in the event of catastrophes such as power outages, tornadoes, loss and/or interruption of Internet access. Contractor shall restore computer and internet services within four hours of a catastrophe that disables Contractor primary systems.

D. City's Decision to Implement the Maintenance Program

Following City's review of Contractor's proposed Maintenance Program, the City may in its sole and absolute discretion decide whether to continue Contractor's services for the implementation of the program. Contractor may commence the implementation of the Maintenance Program when the Contractor, the City departments' contracting officers or their designee(s) execute a dated writing or writings that references this Agreement and identifies the equipment to be maintained and states the cost to the City for the maintenance service for each piece of equipment (the "Equipment List(s)"). Any department may remove equipment from an Equipment List by letter or other writing to Contractor executed by the department's contracting officer or his or her designee(s) and shall receive a reduction in cost for each piece of equipment based on the maintenance price and that is proportional to the ratio of the duration of time remaining for the maintenance of that piece of equipment at the time of deletion to the full maintenance period for the equipment. Any department and Contractor may add equipment to an Equipment List by a writing executed by Contractor and department's contracting officer or his or her designee(s). Any writing adding equipment to the list shall also state the cost to the City for each piece of equipment.

2. Reports

Contractor shall submit written reports as requested by the Office of Contract Administration (OCA), Department of Telecommunications and Information Services (DTIS), and Department of Public Health (DPH). Format for the content of such reports shall be determined by these departments. 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 will be Lynn Khaw, Principal Administrative Analyst, OCA, or her designee(s) authorized in writing, for all matters, except

that the Contractor's liaison shall be Terry Saltz, Director of Facility, DPH, for any issues related to equipment at DPH; and a liaison at DTIS to be specified in writing by DTIS for issues related to any equipment under the authority (Section 22B.2 of City Administrative Code) of DTIS.

Appendix B
Calculation of Charges

Contractor shall not receive any compensation for the services described in Section B and C of Appendix A (Creating the Maintenance Program and Implementation of the Maintenance Program).

If City authorizes implementation of the Maintenance Program in the manner stated in Section D of Appendix A, City shall compensate Contractor only for the maintenance of equipment that City identifies in the Equipment List required in Section D of Appendix A (City's Decision to Implement the Maintenance Program), at the cost reflected in the Equipment List and/or amendment to this Agreement. Contractor's prices for maintaining each piece of equipment shall be fixed for 3 years from the date that the Maintenance Program commences.

Contractor shall invoice the City on a quarterly basis. A quarter shall mean: January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31. Contractor shall submit invoices to City at least 30 days before the beginning of each quarter which itemizes the charges for services provided for individual pieces of equipment. Any changes in costs due to reduction or addition of equipment to the Equipment List shall be reconciled during the subsequent quarter if the changes cannot be captured in the current invoice.

Such Appendices are hereby amended in its entirety to read as follows:

Appendix A
Services to be Provided by Contractor

1. Description of Services

Contractor agrees to perform the following services:

A. The Maintenance Program

Contractor shall design and plan an equipment maintenance program (the "Maintenance Program") which includes the Contractor as the program manager, and which shall satisfy each requirement of Section II of City's Request for Proposal, No. 93400, for an Equipment Maintenance Master Agreement, dated April 9, 2003 (the "RFP"), which are hereby incorporated in this Agreement. Except as otherwise stated below during the Maintenance Program, Contractor shall be entirely responsible for making arrangements for the maintenance of equipment, including, but not limited to, processing invoices and paying any vendor that maintained equipment. Maintenance for purposes of this Agreement shall include maintenance and repairs to equipment.

B. Creating the Maintenance Program

Contractor shall perform the following tasks to create the Maintenance Program:

(1) Contractor shall provide equipment maintenance assessments of all types of City equipment, including, but not limited to, elevators, facility equipment, security equipment, computers, and telecommunication and office equipment. The equipment maintenance assessments shall include, but not be limited to, the assessments of the following: model, make, serial number, age, and location of equipment, service response

time and coverage, start and end dates of current contract, current service requirements, current cost of maintenance, and cost to maintain with the Contractor.

(2) Contractor shall evaluate and determine the equipment maintenance needs of the City departments, starting with Department of Telecommunication and Information Services (DTIS) and the Department of Public Health (DPH), by gathering detailed information on each piece of equipment, interviewing each department's liaison and staff, reviewing the City's existing equipment maintenance contracts, auditing any related accounts payable records or any other relevant documents. Except as otherwise stated in this Agreement, Contractor also shall perform the tasks identified in Exhibit A of Contractor's proposal ("Contractor's Exhibit A") submitted in response to the RFP, commencing with the tasks identified under "Program Announcement and Explanation." For purposes of proposing and creating the Maintenance Program, Contractor shall maintain the schedule in Contractor's Exhibit A; except that the start date of the Program Announcement and Explanation shall be determined and agreed to by the parties in writing.

(3) After completing the services required in paragraphs (1) and (2) of this Section B, Contractor shall provide the following:

- i. A proposal with detail supporting records that shows the savings that can be achieved by placing the equipment under the Maintenance Program.
- ii. A report of the equipment that are still under maintenance or service warranties.
- iii. A report of the equipment service contract's start and end dates, and in consultation with the City Attorney's Office, a report on contracts that may be terminated by the City at will and contracts that do not provide for termination at will by the City.

(4) After analyzing Contractor's proposal and reports, the City will determine the equipment that City would like to place on the Maintenance Program. Contractor will then perform the following:

- Inventory the equipment to identify model, make, location, age, and other information that the contractor deems appropriate (the "inventory information"), and enter that data into Contractor's computer system and website so that the information is readily available to Contractor and City.
- Prepare separate reports for each department containing the inventory information for equipment of that department (the "inventory reports").
- Identify in each report on inventory information, for each piece of equipment, a subcontractor for the maintenance of the equipment (the "service vendor" or "vendor")
- Identify the proposed maintenance coverage in details as required by the City personnel who are authorized to execute a contract on behalf of their departments ("Contracting Officers") or their designee(s) and period of maintenance for each piece of equipment, including the start and end dates and include this information in each inventory.
- Verify inventory information with department personnel.
- Edit each report on the inventory information to reflect the changes required by the department and resubmit the report to the department.
- Present each department with its final reports on inventory information.

(5) Contractor shall assist City, on request, with the cancellation of the current equipment maintenance contracts. All cancellations are subject to the City's Charter and Municipal Code, and shall be subject to any required City approvals, including, but not limited to, approval as to form by the City Attorney's Office.

(6) Contractor shall be responsible for entering into any arrangements with service vendors required to enable Contractor to provide the service required by this Agreement. City will not have any contractual relationship with the service vendors, unless expressly created by written agreement between the City and the service vendors.

(7) Contractor shall provide the services in this Section B without charge to the City.

C. Implementation of the Maintenance Program

(1) Contractor shall tag each piece of equipment with the inventory information.

(2) Contractor shall train City personnel on the use of its web site, currently www.su-group.com, to enable City personnel to make the most efficient use of the Maintenance Program. The department's liaison will inform the Contractor as to when, where and how many persons shall be trained.

(3) Contractor shall provide the City with the highest quality program and the best personnel to handle the needs of the City. Contractor's personnel assigned to this project shall be the persons listed in Appendix D, Contractor's Staff, attached hereto and incorporated by reference as though fully set forth herein. Contractor shall obtain City's advance approval for any substitutions to the project team. Contractor may increase the size of its team if necessary; provided Contractor receives City's advance approval of new additional team members. Each team member shall have significant experience with or be knowledgeable about municipal government equipment needs and understand the types of equipment that will be part of the program. Increases in the size of the team shall not affect the price of this Agreement.

(4) Contractor shall use a state of the art computer system for the administration and implementation of the Maintenance Program.

(5) To obtain maintenance services, City staff shall be required to make only one telephone call to Contractor's Central Dispatch for maintenance of equipment. Contractor's dispatchers shall confirm with the City personnel requesting the service (the "requester") the piece of equipment to be repaired, its location and the reported problem. The dispatcher shall then provide a reference number to the requester. The dispatcher shall immediately call the service vendor to initiate the service call. Service vendor shall call the City directly and advise estimated time of arrival (ETA) and discuss equipment problem. The Contractor shall require service vendors to call the Contractor upon arrival at the location of equipment, to confirm that they have met with City staff about the requested service, and to report the time of their completion of service. The Contractor shall also require that the service vendors send invoices and field service reports directly to the Contractor and give a copy of the field service reports to the department.

(6) Contractor shall review at least annually, or more frequently if requested by the City, each maintenance servicing of each piece of equipment to ensure that the service vendors are providing service of the highest quality to the City. Within 30 days of the completion of each review, Contractor shall create a written record of the results of its review, which shall be available to the City on request. Contractor shall maintain the written records and make such records available to City for a period ending not sooner than one (1) year after the termination or expiration of this Agreement. If the Contractor is advised by the City that a service vendor is not responding in a timely manner, Contractor shall consult with the City to determine if the service vendor should be replaced.

(7) Contractor shall submit a report to the City if a piece of equipment requires unusual maintenance work. The report shall describe the required maintenance and explain why the work required is unusual for the type of equipment.

(8) Contractor shall provide the management reports, 24 hours a day, 7 days a week on its web site at www.su-group.com. The management reports shall include without limitation, the inventory reports, results of the maintenance service review, and any unusual maintenance work. Contractor shall provide the departments printed management reports, on request, and at the frequency requested by the City. Contractor shall with reasonable notice also customize its reports at the request of the City.

(9) Contractor shall be responsible for disputes that a service vendor raises relating to servicing of City's equipment and shall handle such disputes.

(10) City shall identify in writing City personnel who shall be authorized to access Contractor's web site (the "authorized users"). Each authorized user shall have his or her own login and password for access to the web site. Each authorized user shall have the ability to view the status of a service call to the Contractor's dispatcher, view or print information about each piece of equipment, including but not limited to, when it was last service, what kind of maintenance was performed, number of times service calls have been made, and when service was performed.

(11) Contractor acknowledges and agrees that data security and related security measures are critical to the City. Contractor shall ensure the security of data and reports on City's equipment, and shall implement appropriate security measures on its computer system and website to protect that information, including, but not limited to the following:

- i. Virus Protection-The leading virus protection software, and current updates, shall be installed.
- ii. Passwords- System accounts shall be managed and maintained by a System Administrator who shall protect the confidentiality of the account information.
- iii. Each authorized user shall have a designated level of security that will provide access to specific information on Contractor's website. City shall specify the type of information that are reasonable to the authorized user at each level of security in writing.
- iv. Contractor shall maintain hardware and software back-up systems for its computers and internet web site. Contractor shall back-up data and other electronic information related to City equipment once every 24 hours. In addition, Contractor shall have redundant hardware and software that would enable its systems to continue functioning in the event of catastrophes such as power outages, tornadoes, loss and/or interruption of Internet access. Contractor shall restore computer and internet services within four hours of a catastrophe that disables Contractor primary systems.

D. City's Decision to Implement the Maintenance Program

Following City's review of Contractor's proposed Maintenance Program, the City may in its sole and absolute discretion decide whether to continue Contractor's services for the implementation of the program. Contractor may commence the implementation of the Maintenance Program for a City department when the **Office of Contract Administration (OCA) authorizes the Equipment List** between City Departments and Contractor. Upon OCA's authorization, the Contractor, the City departments' Contracting Officers or their designee(s) shall execute a dated writing or writings that references this Agreement and identifies the equipment to be maintained, including model, make, serial number, and location of equipment, service requirements, coverage,

the specifications or performance standards, start and end dates of service, and states the cost to the City for the maintenance service for each piece of equipment (the "Equipment List(s)"). Any department may remove equipment from an Equipment List by letter or other writing to Contractor executed by the department's Contracting Officer or his or her designee(s) and shall receive a reduction in cost for each piece of equipment based on the maintenance price and that is proportional to the ratio of the duration of time remaining for the maintenance of that piece of equipment at the time of deletion to the full maintenance period for the equipment. Any department and Contractor **may add equipment** to an Equipment List by a writing executed by Contractor and department's Contracting Officer or his or her designee(s), subject to the advance approval of OCA. Any writing adding equipment to the list shall also state the cost to the City for each piece of equipment.

Insurance coverages and proof of each coverage shall be provided in accordance with Sections 16A and 16B of this Agreement before commencing the maintenance of any City equipment.

Contractor shall maintain a written record of each warranty coverage provided by the vendors for any goods or services including, but not limited to, maintenance of equipment performed in connection with this Agreement.

In addition, Contractor shall maintain a written record of vendors' insurance coverages required by Section 16B of this Agreement.

2. Reports

Contractor shall submit written reports as requested by the OCA, Department of Telecommunications and Information Services (DTIS), and Department of Public Health (DPH). Format for the content of such reports shall be determined by these departments. 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 will be Lynn Khaw, Principal Administrative Analyst, OCA, or her designee(s) authorized in writing, for all matters, except that the Contractor's liaison shall be Terry Saltz, Director of Facility, DPH, for any issues related to equipment at DPH; and Marc Rosaaen, Principal Administrative Analyst, DTIS, for issues related to any equipment under the authority (Section 22B.2 of City Administrative Code) of DTIS.

Appendix B Calculation of Charges

Contractor shall not receive any compensation for the services described in Section B and C of Appendix A (Creating the Maintenance Program and Implementation of the Maintenance Program).

If City authorizes implementation of the Maintenance Program in the manner stated in Section D of Appendix A, City shall compensate Contractor only for the maintenance of equipment that City identifies in the Equipment List required in Section D of Appendix A (City's Decision to Implement the Maintenance Program), at the cost reflected in the Equipment List and/or amendment to this Agreement. Contractor's prices for maintaining each piece of equipment shall be fixed for 3 years from the date that the Maintenance Program commences.

Contractor shall invoice the City in arrears on a quarterly basis. A quarter shall mean: January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31. Contractor shall submit

invoices to City at least 30 days before the end of each quarter for services to be provided in that quarter which itemizes the charges for services provided for individual pieces of equipment. Any changes in costs due to reduction or addition of equipment to the Equipment List shall be reconciled during the subsequent quarter if the changes cannot be captured in the current invoice.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the execution of this Amendment.

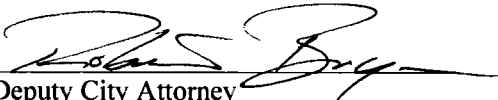
4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

Approved as to Form:

Dennis J. Herrera
City Attorney

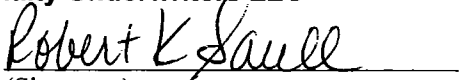
By 
Deputy City Attorney

Approved:


Naomi Little
Director of Office of Contract Administration/Purchaser

CONTRACTOR

Specialty Underwriters LLC

By 
(Signature)

Robert K. Saull, Ex. V.P. & CPO
Name and Title

Appendix D Contractor's Staff

Specialty Underwriters LLC Personnel assigned to the City and County of San Francisco Cost Reduction Initiative:

<u>NAME</u>	<u>RESPONSIBILITY</u>
Joseph Graham	Sales for Healthcare Equipment Only
Mike Miller	Sales
Bob Saull	Contracting
Peter Vincer	Executive Account Management
Joe Fallico	Account Manager