

# 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

## SECOND AMENDMENT

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

THIS AMENDMENT (this "Amendment") is made as of September 13, 2006, 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, as amended by the First Amendment dated May 12, 2005.

(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 2. Term of Agreement.** Section 2. of the Agreement currently reads as follows:

Subject to Section 1, the term of this Agreement shall be from September 15, 2003 to September 14, 2006. City shall have the options to extend the Agreement for two (2) additional three-year terms by advance written notice to Contractor.

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

**2. Term of the Agreement.**

Subject to Section 1, the original term of this Agreement is from September 15, 2003 to September 14, 2009 with the option to extend the Agreement for one additional three-year term by advance written notice to Contractor.

(b) **Section 16A. Insurance – Contractor.** Section 16A. 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 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.

**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.

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 of coverage for any reason or reduction in coverage or non-renewal mailed to the following address:

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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.

**(c) Section 16B. Insurance-Subcontractor.** Section 16B. of the Agreement currently reads as follows:

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:

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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.

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

**16B. Bonds – Contractor**

Contractor shall maintain or cause to be maintained a performance bond in an amount not less than \$500,000 to guarantee faithful performance of its contractual obligations and a labor and materials bond in an amount not less than \$500,000 to guarantee payment for all labor and materials, equipment, and supplies provided by subcontractors for the performance of this Agreement. As an alternative, Contractor may purchase the aforementioned bonds to cover Contractor and subcontractors under a Master Bond. The Master Bond shall guarantee the performance of Contractor and all subcontractors of Contractor's obligation under this Agreement, and shall guarantee the payment obligations of Contractor and its subcontractors. The performance bond amount for the Master Bond shall be not less than \$500,000. The labor and materials bond amount for the Master Bond shall not be less than \$500,000.

The performance bond and labor and materials bond, including the Master Bond, shall be substantially in the form as provided by the Risk Manager.

In lieu of a performance bond, and a labor and materials bond, Contractor may submit a letter of credit subject to the Risk Manager's approval. The letter of credit shall be substantially in the form provided by the Risk Manager.

**(d) Section 16C. Insurance – Subcontractor.** Section 16C. is hereby added to the Agreement as follows:

**16C. 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 cancellation of coverage for any reason or reduction in coverage or non-renewal mailed to the following address:

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City and County of San Francisco  
Office of Contract Administration  
City Hall, Room 430  
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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 16C, and 16B. 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.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after September 13, 2006.

**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 Kelly  
Director of Office of Contract Administration/  
Purchaser

**CONTRACTOR**

**Specialty Underwriters LLC**

By  \_\_\_\_\_  
(Signature)

TIM A. PETERSON, CPO  
Name and Title