

**City and County of San Francisco**  
**Office of Contract Administration**  
**Purchasing Division**

**NINTH AMENDMENT**

THIS AMENDMENT (this "Amendment") is made as of **August 2, 2007**, in San Francisco, California, by and between **GRM Information Management Services of San Francisco, LLC., dba Simmba/GRM Information Management Systems** ("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 **August 1, 2001** between Contractor and City, as amended by the First amendment dated September 11, 2001, and by the Second Amendment dated December 1, 2001, and by the Third Amendment dated September 1, 2002, and by the Fourth Amendment dated January 10, 2003, and by the Fifth Amendment dated March 31, 2003, and by the Sixth Amendment dated May 19, 2003, and by the Assignment and Assumption Agreement dated June 25, 2003, and by the Seventh Amendment dated July 22, 2003. and by the Eighth Amendment dated August 4, 2006.

(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 (Terms of the Agreement)** currently reads as follows:

Subject to Section 1, the term of this Agreement shall be from August 1, 2001 to July 31, 2007.

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

Subject to Section to 2, the Term of this Agreement shall be from **August 1, 2001 to January 31, 2008.**

(b) **Sixth Amendment, Section 54 (First Source Hiring Program)** currently reads as follows:

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

(1) Contractor will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time.

(2) Contractor will comply with requirements for providing timely, appropriate 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.

(3) Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. A Contractor may establish its good faith efforts by filling: 1) its first available Entry Level Position with a job applicant referred through the First Source Program; and, 2) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.

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

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$2,070 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.

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

**54. First Source Hiring Program**

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

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

**b. First Source Hiring Agreement**

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

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

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

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

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

(6) Set the term of the requirements.

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

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

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

**c. Hiring Decisions**

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

**d. Exceptions**

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

**e. Liquidated Damages**

Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the

City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

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

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

(7) That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

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.

(c) **Sixth Amendment Section 51 (Limitation on Contribution)** currently reads as follows:

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 or 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 of 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.

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

**51. 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 a board 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.

(d) **Eighth Amendment Section 58 (Nondisclosure of Private Information)** currently reads as follows:

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.

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

## **58. Protection of Private Information**

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code ("Protection of Private Information"), including the remedies provided. The provisions of Chapter 12M 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 Chapter 12M. Consistent with the requirements of Chapter 12M, 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:

- (1) The disclosure is authorized by this Agreement;
- (2) The Contractor received advance written approval from the Contracting Department to disclose the information; or
- (3) The disclosure is expressly required by a 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 Chapter 12M 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.

**Food Service Waste Reduction Requirements.** Section **60** is hereby added to the Agreement, as follows:

**60. 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.

**Slavery Era Disclosure.** Section **61** is hereby added to the Agreement, as follows:

**61. Slavery Era Disclosure**

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

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

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



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


**CITY**

**CONTRACTOR**

Recommended by:

**GRM Information Management Services**

Darlene Frohm 10/02/07  
Darlene Frohm  
Senior Purchaser  
Office of Contract  
Administration/Purchasing

  
~~Pablo Beltran~~ **STEVE A. HWOOD**  
General Manager  
GRM Information Management System  
41099 Boyce Road  
Fremont CA 94538


City vendor number: **62283**

Approved as to Form:

Dennis J. Herrera  
City Attorney

By:   
Deputy City Attorney

Approved:

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

**CITY AND COUNTY OF SAN FRANCISCO**  
OFFICE OF CONTRACT ADMINISTRATION  
PURCHASING DIVISION

**EIGHTH AMENDMENT**

THIS AMENDMENT (this "Amendment") is made as of **August 4, 2006**, in San Francisco, California, by and between **GRM Information Management Services of San Francisco, LLC, d/b/a Simmba/GRM Information Management Systems** ("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 **August 1, 2001** between Contractor and City, as amended by the First amendment dated September 11, 2001, and by the Second Amendment dated December 1, 2001, and by the Third Amendment dated September 1, 2002, and by the Fourth Amendment dated January 10, 2003, and by the Fifth Amendment dated March 31, 2003, and by the Sixth Amendment dated May 19, 2003, and by the Assignment and Assumption Agreement dated June 25, 2003, and by the Seventh Amendment dated July 22, 2003.

(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 (Terms of the Agreement)** currently reads as follows:

Subject to Section 1, the term of this Agreement shall be from August 1, 2001 to July 31, 2006.

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

Subject to Section to 1, the term of this Agreement shall be from August 1, 2001 to July 31, 2007.

(b) **The first paragraph of Section 5 (Compensation)** currently reads as follows:

Compensation shall be made for services in accordance with prices stated in Appendix B, Revision 4 of this Agreement. Payments shall be made by the City to Contractor in arrears, for completed orders of services and materials rendered throughout the term of the contract.

The first paragraph of such section is hereby amended in its entirety to read as follows:

Compensation shall be made for services in accordance with prices stated in Appendix B, Revision 4 of this Agreement. Payments shall be made by the City to Contractor in arrears, for completed orders of services and materials rendered throughout the term of the contract. In no event shall the amount of this Agreement exceed Six Million Dollars (\$6,000,000.00).

(c) **Section 23 (Conflict of Interest)** 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 the 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.

(d) **Section 48 (Minimum Compensation Ordinance)** of the Agreement currently reads as follows:

#### **48. Minimum Compensation Ordinance**

The Minimum Compensation Ordinance went into effect October 8, 2003. This new law requires some, but not all, organizations that have service contracts with the City, or operate at San Francisco International Airport to pay their employees who are working on those City contracts at least (\$9 per hour and provide 12 paid days off per year and 10 unpaid days off per year (for a full-time employee working under the City contract). If an employee works less than full time on the City contract, the employer must pay the employee \$9 an hour for the hours worked on the City contract, and the paid and unpaid time off must be proportional to the hours worked on the City contract.

To qualify for MCO benefits, the employees working on the City contract must work at least 4 hours per week per pay period if they are working within San Francisco's city limits or on property owned by the City, or at least 10 hours per week per pay period if they are working elsewhere.

The MCO applies only if you have at least \$25,000 (\$50,000 for non-profit organizations) in cumulative annual business with a City department, and have more than 20 employees, including employees of any parent, subsidiaries and subcontractors. If you meet these criteria, but do not provide MCO benefits for a potential City contract, the City can do business with you only if the contract receives an exemption or a waiver.

Your best source of information about the MCO is the MCO website:  
[www.ci.sf.ca.us/mco](http://www.ci.sf.ca.us/mco)

You will find:

- the text of the ordinance. Section 12P.5 contains new contract language that appears in the City's contracts and purchase orders.
- Information and Help for Contractors

- Information and Help for Contractors at the Airport
- Information and Help for Employees
- FAQs
- Forms
- Contact Information

Chapter 12.P of the S.F. Admin. Code is incorporated herein by reference, and Contractor agrees to comply with the MCO in performing this Contract. In addition to any other MCO provisions that may be applicable to Contractor, Contractor agrees to abide by the following terms:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of the Contract, Contractor shall provide to the Covered Employee no less than the Minimum Compensation.

b. Contractor understands and agrees that the failure to comply with the foregoing Requirements of the MCO shall constitute a material breach by Contractor of the terms of this Contract. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

c. 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, acting through its Department of Purchasing, shall have the right to pursue any rights or remedies available under the terms of this Agreement, Chapter 12.P or other applicable law.

d. Contractor shall not discharge, reduce in compensation, or otherwise discriminate Against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

e. 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.

f. Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO.

h. The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five business days to respond.

i. The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited

to one audit of Contractor every two years for the duration of this Contract. Nothing in this Contract is intended to preclude the City from investigating any report of an alleged violation of the requirements of this contract relating to the MCO.

j. Any Contractor subject to the provisions of this Chapter shall promptly notify the City of any subcontractors performing services covered by this Chapter and shall certify to the City that it has notified the subcontractors of their obligations under this Chapter.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue all lawful remedies in the event of a breach by Contractor of subsections (a) and (b).

l. If Contractor is exempt from the MCO when this Contract is executed because the cumulative amount of contracts with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into a contract or contracts that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Contract. This obligation arises on the effective date of the contract that causes the cumulative amount of contracts between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

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

#### **48. Requiring Minimum Compensation for Covered Employees**

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 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 <http://www.sfgov.org/olse.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of \$10.77 an hour beginning January 1, 2005 and for the remainder of the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of this Agreement.

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

(c) Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

**(d)** 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, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;

(3) The right to terminate this Agreement in whole or in part;

(4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(5) The right to bar Contractor from entering into future contracts with the City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

**(e)** 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.

**(f)** Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

**(g)** Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

**(h)** The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five business days to respond.

**(i)** The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

(j) 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. A subcontract means an agreement between the Contractor and a third party that requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. 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.

(k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

(l) 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 (\$50,000 for nonprofits), 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 (\$50,000 for nonprofits) in the fiscal year.

(m) **Effect of MCO on Agreement.** As of the date of this amendment, the Agreement is subject to MCO. Contractor is not required to provide MCO benefits retroactively to the start date of the Agreement.

(n) **Effect of MCO on other contracts between Contractor and City.** As of the date of this Amendment, all contracts now in force between Contractor and City are subject to MCO, unless an exemption (except for dollar amount) or waiver applied to the contract. For example, if a contract was signed before the effective date of the MCO, it does not become subject to MCO by virtue of this amendment. However, if a contract was signed after the effective date of MCO and was exempt because the cumulative dollar amount of all contracts between Contractor and the City department was below \$25,000 (or \$50,000 for a non-profit Contractor), then it becomes subject to MCO by virtue of this Amendment.

(e) **Section 50 (Requiring Health Benefits for Employees)** of the Agreement currently reads as follows:

Unless exempt, 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 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 <http://www.sfgov.org/oca/lwlh.htm>. 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(d) 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(f)(1-5). 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 keep itself informed of the current requirements of the HCAO.

h. 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.

i. 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 five business days to respond.



j. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

k. 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.

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

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 Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse.htm>. 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 Purchasing Division when it enters into such a Subcontract and shall certify to the Purchasing Division 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 employee 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.

(n) **Effect of HCAO on Agreement.** As of the date of this amendment, the Agreement is subject to HCAO. Contractor is not required to provide HCAO benefits retroactively to the start date of the Agreement.

(o) **Effect of HCAO on other contracts between Contractor and City.** As of the date of this Amendment, all contracts now in force between Contractor and City are subject to HCAO, unless an exemption (except for dollar amount) or waiver applied to the contract. If Contractor has entered into agreements with one or more City Departments, the aggregate amount of which equal \$25,000 or less payable from those Departments, this Agreement is exempt from the HCAO. For non-profit corporations, this threshold is \$50,000. If Contractor has multiple agreements with the City in a given fiscal year (which agreements would be considered "Contracts" under Chapter 12Q except that the individual dollar amounts are below the thresholds set forth in the preceding sentence) and the cumulative amount of such Agreements, including this Amendment, is \$75,000 or more, each such agreement then becomes subject to HCAO by virtue of this Amendment.

(f) **Section 51 (Notification of Limitations on Contributions)** of the Agreement currently reads as follows:

**51. Notification of Limitations on Contributions**

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 the 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:

#### **51. 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 or 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 of 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.

**(g) Section 52 (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. Funds paid to Contractor for services performed hereunder and which were not for a Political Activity, are not subject to the restrictions of San Francisco Administrative Code Chapter 12.G.

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.

**(h) Section 55 (Preservative-treated Wood Containing Arsenic)** currently reads as follows:

As of July 1, 2003, Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 21G is obtained from the Department of the Environment under Section 21G.5 of the Administrative 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.

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

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.

**(i) Section 57 (Supervision of Minors)** is hereby added to the Agreement, as follows:

**Section 57. 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.

**(j) Section 58 (Nondisclosure of Private Information)** is hereby added to the Agreement, as follows:

**Section 58. Nondisclosure of Private Information.**

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.

(k) **Section 59 (Graffiti Removal)** is hereby added to the Agreement, as follows:

#### **Section 60. 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.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after **August 1, 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**

Recommended by:

Darlene Frohm 12/11/06  
Signature for Department

Darlene Frohm  
Printed Name

Senior Purchaser, OCA  
Title and Department

Approved as to Form:

Dennis J. Herrera  
City Attorney

By V. Ueyman  
Deputy City Attorney

Approved:

AK Naomi Kelly  
Naomi Kelly  
Director of Office of Contract Administration/  
Purchaser

**CONTRACTOR**

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.

**GRM Information Management  
62283**

By Pablo Beltran  
(Signature)

PABLO BELTRAN / GENERAL MGR  
Name and Title

CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF CONTRACT ADMINISTRATION

**SEVENTH AMENDMENT**

THIS AMENDMENT (this "Amendment") is made as of **July 22, 2003**, in San Francisco, California, by and between **GRM Information Management Services of San Francisco, LLC, d/b/a Simmba/GRM Information Management Systems** ("Contractor"), and the **City and County of San Francisco**, a municipal corporation ("City"), acting by and through its Director of Purchasing,

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 August 1, 2001 between Contractor and City, as amended by the First Amendment dated September 11, 2001, and by the Second Amendment dated December 1, 2001, and by the Third Amendment dated September 1, 2002, and by the Fourth Amendment dated January 10, 2003, and by the Fifth Amendment dated March 31, 2003, and by the Sixth Amendment dated May 19, 2003, and by the Assignment and Assumption Agreement dated June 25, 2003.

(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) **Sixth Amendment Section 2.(a) in reference to Section 5 of the Agreement.** Sixth Amendment dated May 19, 2003 to the Agreement currently reads as follows:

(a) Section 5 of the Agreement currently reads as follows:

Compensation shall be made for services in accordance with prices stated in **Appendix B, Revision 3** of this Agreement. Payments shall be made by the City to Contractor in arrears, for completed orders of services rendered throughout the term of the contract.

No payment shall be made to Contractor until products, services or both, stated under this Agreement are received and approved by the department as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refuses to satisfy any material obligation provided for under this Agreement. In no event shall the City be liable for interests or late charge for any late payments.



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

Compensation shall be made for services in accordance with prices stated in **Appendix B, Revision 4** of this Agreement. Payments shall be made by the City to Contractor in arrears, for completed orders of services rendered throughout the term of the contract.

No payment shall be made to Contractor until products, services or both, stated under this Agreement are received and approved by the department as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refuses to satisfy any material obligation provided for under this Agreement. In no event shall the City be liable for interests or late charge for any late payments.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after **August 1, 2003.**

**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**

Recommended by:

Violet Lee-Fong  
Signature for Department

Violet Lee-Fong  
Printed Name

PURCHASER - OCA  
Title and Department

Approved as to Form:

Dennis J. Herrera  
City Attorney

By [Signature]  
Deputy City Attorney

Approved:

[Signature]  
Judith A. Blackwell  
Director, Office of Contract Administration

**CONTRACTOR**

**GRM INFORMATION MANAGEMENT  
SERVICES OF SAN FRANCISCO, LLC,  
d/b/a SIMMBA/GRM INFORMATION  
MANAGEMENT SYSTEMS**

By [Signature]

Title Vice President / General Manager

APPENDIX B, REVISION 4

Calculation of Charges

The following charges, as negotiated between Simmba Systems LLC and the City and County of San Francisco, shall be the payment that the Contractor is to receive for successfully undertaking, performing and complying with the services, responsibilities and requirements listed in Appendix B of this Agreement.

1. Initial Transportation Costs (Add Lot)

Initial pickup and transportation of file records from a City department location to Contractor’s facility.

- \$1.06 per box
- \$1.06 per file
- \$1.06 per ledger

\*First 3 items delivered free of charge, \$10.08 visitation fee applied for each new stop.

2. Initial Filing / Labeling Costs

Initial entry of records from City departments into Contractor’s record storage system, including carton labeling, filing of record box in the storage facility and entry into Contractor’s computer system.

\$1.06 per box

3. Migration Costs

Any and all costs for moving City’s documents from Iron Mountain to Simmba Systems LLC. Such costs will include and will be limited to Simmba’s costs for pick-up, transportation, initial filing, labeling and initial entry of records into Simmba’s system and facility.

\$0.37 per box

4. Permanent Removal Costs

Transportation and removal costs per box delivered to a City department or other destination, which will not be returned to Simmba’s system. This cost should include any inputting of information in Simmba’s computer system on such a request.

Charges would be as listed in No. 7 – Retrieval  
**There is No Additional Charge for permanent removal.**

5. Reboxing

Transfer of records from damaged records storage box to a new flat box. The cost of reboxing includes the cost of a new flat box and all other associated costs.

- Standard Sized Box (15”x12”x10”) \$3.18 per box
- Letter Transfer Box (24”x12”x10”) \$4.24 per box
- X-ray Box (24”x12”x10”) \$4.24 per box

Miscellaneous Storage Boxes:  
Simmba provides any size and type of storage box for CCSF.  
Simmba will provide storage box quotations for miscellaneous sized boxes on an as needed basis for CCSF. Heavy-duty triple walled standard size 15”x12”10” record boxes are available from Simmba for \$1.96 per box.

## 6. Storage Charge

Monthly storage charge, standard box:

First 5 months (August 1, 2001 through January 1, 2002): free storage (for all existing boxes stored at Iron Mountain)

Next 7 months (ending July 31, 2002):	\$0.09 per box
Year 2 – Aug. 1, 2002	\$0.11 per box
Year 3 – Aug. 1, 2003	\$0.14 per box
Year 4 – Aug. 1, 2004	\$0.17 per box
Year 5 – Aug. 1, 2005	\$0.17 per box

Monthly storage charge for ledgers, and other box size (per cubic foot):

First 5 months (August 1, 2001 through January 1, 2002): free storage (for all existing boxes stored at Iron Mountain)

Next 7 months (ending July 31, 2002):	\$0.09 per box
Year 2 – Aug. 1, 2002	\$0.11 per box
Year 3 – Aug. 1, 2003	\$0.14 per box
Year 4 – Aug. 1, 2004	\$0.17 per box
Year 5 – Aug. 1, 2005	\$0.17 per box

## 7. Retrievals

### Regular Deliveries:

Retrieval and transportation of a box and/or file from Simmba's facility to requesting department:

Departments may request retrievals between 7:00 a.m. to 5:00 p.m., Monday through Friday. Requests before 10:00 a.m. must be delivered the same day at no additional charge.

Retrieval fee:	\$2.22 per box, \$2.22 per file, \$2.22 per ledger
Delivery/pickup fee:	*\$10.08 visitation fee

\*fee includes the delivery/pickup of the first 3 items - \$1.85 per additional item thereafter (same rate for box, file or ledger)

### Emergency Delivery Charge:

Retrieval and transportation of a box and/or file from Simmba's facility to requesting department within two hours of request.

\$19.40

## 8. Refile Rate

Refiling items that are returned to contractor's facility after department use.

\$1.85 per box
\$1.85 per file
\$1.85 per ledger

\*Retrieval fee is not applicable for refile service, delivery/pickup fee does apply.

**9. Destruction Rate**

Destruction of standard sized box	\$1.06 per box
Destruction of file	\$1.06 per file
Destruction of ledger	\$1.06 per ledger

\*On-site high security mulching available for \$2.58 per cubic foot.

**10. Conversion Rate**

Indexing is \$0.009 per keystroke via an hourly rate.	
Grade #3, manual feed, less than 500K pages	\$0.116 per page
Grade #1, high speed auto feed, over 2.5 million pages	\$0.040 per page

NOTE: Conversion is not charged via an hourly rate.

**11. Document Access Safety Features:**

There is no additional fee charged by Simmba for customized document access. Customized document access security code setup is a part of the overall service package to CCSF.

No special software is required.

**12. Work Area Costs**

Work Room	Free of Charge
Fax	\$1.06 per page
Phone	Free (less long distance range)
Photocopying	\$0.26 per page
Computer	Free

\*Simmba offers multiple on-site work areas for customers. Each work area is completely equipped with telephone; fax copy machine and a computer with Internet access. CCSF is welcome to use these work areas twenty-four hours a day, subject to availability. Simmba's staff will be available around-the-clock to provide work area clients with customer service.

\*Use of the viewing rooms is free of charge.

**Online Services**

Simmba provides customers with online services that allow them to access their file inventory and request services. Online services are accessed through Simmba's Website. No special software or hardware required.

\$41.20/per month per department

**Miscellaneous Records Management Consulting**

\$31.30 per labor hour

**13. Deleted (see Third Amendment dated September 1, 2002)**

14. Deleted (see Third Amendment dated September 1, 2002)

**For Department of Elections ONLY:**

15. **Per pallet retrieval fee** (For shrink wrapped unvoted ballot box pallets stored in regular storage.)

\$20.00 per pallet

16. **Re-palletization fee** (For any shrink wrapped unvoted ballot box pallets, applicable only if pallets received from Department of Elections exceed the pallet height maximum specified in the contract addendum: the fee will be equal to the per box retrieval fee of \$2.16 per box as specified in the original agreement between CCSF and Simmba Systems LLC.

17. All other associated service fees for receiving, retrieval, refile, and other types of activity requested are as listed in the original agreement between CCSF and Simmba Systems LLC.

18. **Shrink wrap fee:**

No charge

\*Except for the storage charge, all services are subject to a yearly CPI (Consumer Price Index) adjustment not to exceed five (5) percent.

**CITY AND COUNTY OF SAN FRANCISCO**  
PURCHASING DEPARTMENT

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT (this "Assignment") is made as of **June 25, 2003**, in San Francisco, California by and between **Simmba Systems LLC** ("Assignor") and **Simmba/GRM Information Management Systems** ("Assignee").

RECITALS

WHEREAS, Assignor is a party to the Agreement (as defined below); and

WHEREAS, Assignor desires to assign the Agreement, and Assignee desires to assume the Agreement, each on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Assignment, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

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

(a) **Agreement.** The term "Agreement" shall mean the Agreement dated **August 1, 2001** between Assignor and City and County of San Francisco, a municipal corporation ("City"). The term "Agreement" shall include any amendments or modifications set forth in Appendix A attached hereto and made a part hereof.

(b) **Effective Date.** "Effective Date" shall mean **June 11, 2003**.

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

2. **Assignment.** Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title and interest in and to the Agreement and all of Assignor's duties and obligations thereunder, to the extent arising on or after the Effective Date.

3. **Assumption.** Assignee hereby accepts the assignment transfer and conveyance set forth in Section 2 and agrees to perform all of Assignor's duties and obligations under the Agreement, to the extent arising on or after the Effective Date.

4. **Mutual Indemnities**

(a) **Assignor.** Assignor shall indemnify, defend and protect Assignee, and hold Assignee harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of (a) any failure of Assignor to convey its interest pursuant to Section 2, free and clear of all third-party liens, claims or encumbrances or (b) any breach by Assignor of the Agreement or any other failure to perform or observe any of the duties or obligations of Assignor thereunder, to the extent such breach or failure arises prior to the Effective Date.

(b) **Assignee.** Assignee shall indemnify, defend and protect Assignor, and hold Assignor harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of any breach by Assignee of the Agreement or any other failure to perform or observe any of the duties or obligations thereunder assumed by Assignee pursuant to this Agreement.

5. **Governing Law.** This Assignment shall be governed by the laws of the State of California, without regard to its conflict of laws principles.

6. **Headings.** All section headings and captions contained in this Assignment are for reference only and shall not be considered in construing this Agreement.

7. **Entire Agreement.** This Assignment sets forth the entire agreement between Assignor and Assignee relating to the Agreement and supersedes all other oral or written provisions.

8. **Further Assurances.** From and after the date of this Assignment, Assignor and Assignee agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the conveyance contemplated by this Assignment as may be required by City.

9. **Severability.** Should the application of any provision of this Assignment 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 Assignment 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 Assignor, Assignee and City.

10. **Successors; Third-Party Beneficiaries.** Subject to the terms of the Agreement, this Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Except as set forth in Section 12, nothing in this Assignment, whether express or implied, shall be construed to give any person or entity (other than City and the parties hereto and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Assignment or any covenants, conditions or provisions contained herein.

11. **Notices.** All notices, consents, directions, approvals, instructions, requests and other communications regarding this Assignment or the Agreement shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (if a facsimile number is provided below). All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time Assignor, Assignee or City may designate a new address for purposes of this Section by notice to the other signatories to this Assignment.

If to Assignor:

**Simmba Systems LLC  
Rich Sherratt  
1150 Ballena Boulevard, Suite 250  
Alameda, CA 94501**



If to Assignee:

**Simmba/GRM Information Management Services  
Patrick McKillop  
41099 Boyce Road  
Fremont, CA 94538**

If to City:

**City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
Violet Lee-Fong, Purchaser  
1 Dr. Carlton B. Goodlett Place, Room 430  
San Francisco, CA 94102-4685**

12. **Consent of City; No Release of Assignor; Waivers.** Each of Assignor and Assignee acknowledges that the prior written consent of City to this Assignment is required under the terms of the Agreement. City shall be a third party beneficiary of this Assignment (other than Section 4) and shall have the right to enforce this Assignment. Neither this Assignment nor the consent of City set forth below shall release Assignor in whole or in part from any of its obligations or duties under the Agreement if Assignee fails to perform or observe any such obligation or duty. Assignor has entered into this Assignment and obtained such consent of City based solely upon Assignor's independent investigation of Assignee's financial condition and ability to perform under the Agreement, and Assignor assumes full responsibility for obtaining any further information with respect to Assignee or the conduct of its business after the date of this Assignment. Assignor waives any right to require City to (a) proceed against any person or entity including Assignee, (b) proceed against or exhaust any security now or hereafter held in connection with the Agreement, or (c) pursue any other remedy in City's power. Assignor waives any defense arising by reason of any disability or other defense of Assignee or any other person, or by reason of the cessation from any cause whatsoever of the liability of Assignee or any other person. Assignor shall not have and hereby waives any right of subrogation to any of the rights of City against Assignee or any other person and Assignor waives any right to enforce any remedy of Assignor against Assignee (including, without limitation, Section 4(b)) or against any other person unless and until all obligations to City under the Agreement and this Assignment have been paid and satisfied in full. Assignor waives any benefit of any right to participate in any collateral or security whatsoever now or hereafter held by City with respect to the obligations under the Agreement. Assignor authorizes City, without notice or demand and without affecting Assignor's liability hereunder or under the Agreement to: (i) renew, modify or extend the time for performance of any obligation under the Agreement; (ii) take and hold security for the payment of any obligation under the Agreement and exchange, enforce, waive and release such security; and (iii) release or consent to an assignment by Assignee of all or any part of the Agreement.

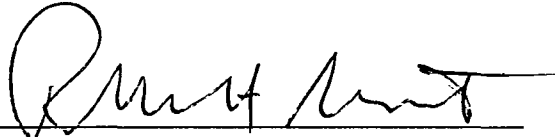
IN WITNESS WHEREOF, Assignor and Assignee have each duly executed this Assignment as of the date first referenced above.

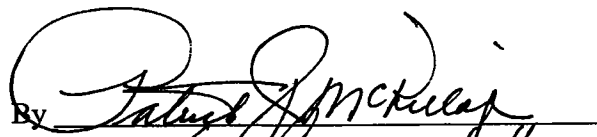
**ASSIGNOR**

**ASSIGNEE**

**Simmba Systems LLC**

**Simmba/GRM Information Management Services**

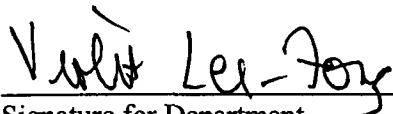
By   
Title CFO

By   
Title Vice President / General Manager

Subject to Section 12 of this Assignment, City hereby consents to the assignment and assumption described in Sections 2 and 3 of this Assignment.

**CITY**

Recommended by:


  
Signature for Department

VIOLET LEE-FONG  
Printed Name

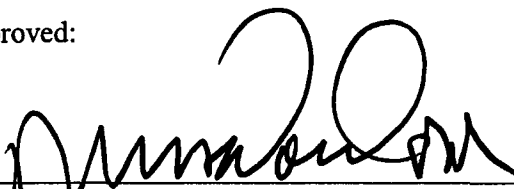
PURCHASER - OCA  
Title and Department

Approved as to Form:

Dennis J. Herrera  
City Attorney

By   
Deputy City Attorney

Approved:

  
Judith A. Blackwell  
Director, Office of Contract Administration

## APPENDIX A

### Amendments

#### List all amendments to the original agreement

1. First Amendment, dated **September 11, 2001**.
2. Second Amendment, dated **December 1, 2001**.
3. Third Amendment, dated **September 1, 2002**.
4. Fourth Amendment, dated **January 10, 2003**.
5. Fifth Amendment, dated **March 31, 2003**.
6. Sixth Amendment, dated **May 19, 2003**.

### Attachments

1. Letter from **Simmba Systems LLC**, dated February 10, 2003.
2. Letter from **GRM Information Management Systems**, dated February 10, 2003.
3. Agreement between the City and County of San Francisco and **Simmba Systems LLC**.
4. **HRC Form 12B-109** – Confirmation of Contract-by-Contract Compliance with Chapter 12B of the San Francisco Administrative Code, dated June 11, 2003.



# Simmba Systems™ LLC

1150 Ballena Boulevard, Suite 250  
Alameda, CA 94501  
Phone (510) 749 4994 • Fax (510) 521 3972  
800•932•3006 www.simmba.com

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February 10, 2003

Violet Lee-Fong  
Purchaser  
City and County of San Francisco  
Purchasing Department  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4685

Dear Violet -

On January 15, 2003, Simmba partnered with GRM Information Management Services in order to execute a long-range expansion plan that allows us to provide a broader range of information management services to our clientele. This partnership will bring in the latest imaging and digital record management services available in today's marketplace, while providing financial capital in order to continue to expand Simmba's core business of hard-copy record storage and management services.

Through this partnership, Simmba has merged its assets into a new business entity. This new entity's information is as follows:

Name: GRM Information Management Services of San Francisco, LLC  
DBA: Simmba / GRM Information Management Services  
Federal Tax ID#: 133468713

All address, telephone, fax and other contact information remains the same. If you have any questions please do not hesitate to contact me.

Sincerely,

Greg Cumiskey  
President



*Information  
Management Services*

February 10, 2003

Violet Lee-Fong  
Purchaser  
City and County of San Francisco  
Purchasing Department  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4685

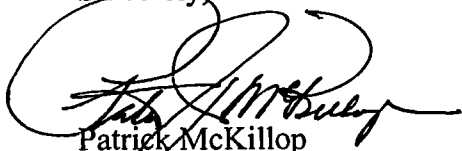
Dear Violet:

On January 1, 2003, Simmba Systems LLC merged its assets into GRM Information Management Services of San Francisco, LLC.

DBA: Simmba / GRM Information Management Services  
Federal Tax ID#: 133468713

All Simmba address, telephone, fax and other contact information remains the same. If you have any questions please do not hesitate to contact me.

Sincerely,



Patrick McKillop  
General Manager

**CITY AND COUNTY OF SAN FRANCISCO**

OFFICE OF CONTRACT ADMINISTRATION

PURCHASING DIVISION

**SIXTH AMENDMENT**

THIS AMENDMENT (this "Amendment") is made as of **May 19, 2003**, in San Francisco, California, by and between **Simmba Systems 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 **August 1, 2001** between Contractor and City, as amended by the **First Amendment** dated September 11, 2001, and by the **Second Amendment**, dated December 1, 2001, and by the **Third Amendment** dated September 1, 2002, and by the **Fourth Amendment** dated January 10, 2003 and by the **Fifth Amendment** dated March 31, 2003.

(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) **First Source Hiring Program.** Section 54 is hereby added to the Agreement, as follows:

**54. 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

(1) Contractor will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time.

(2) Contractor will comply with requirements for providing timely, appropriate 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.

(3) Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. A Contractor may establish its good faith efforts by filling: 1) its first available Entry Level Position with a job applicant referred through the First Source Program; and, 2) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.

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

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$2,070 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.

(b) **Preservative-treated Wood Containing Arsenic.** Section 55 is hereby added to the Agreement, as follows:

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

As of July 1, 2003, Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 21G is obtained from the Department of Environment under Section 21G.5 of the Administrative 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.

(c) **Services Provided by Attorneys.** Section 56 is hereby added to the Agreement, as follows:

**56. 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.

(d) Appendix A is amended to include a new Section A.1.4.a to read as follows:

**4. High Security Record Destruction Services for the City and County of San Francisco (CCSF).**

a. **Shredding Services.** Contractor will provide large security containers placed onsite at various CCSF department locations. Per cubic foot "high security mulching fee" and the delivery/pickup "visitation fee" of the Agreement shall apply.

Contractor will not charge any additional fees for item transportation, for the rental or purchase of shredding bins, or for the rental or purchase of locks for each bin.

The following option will apply if requested by department:

Security containers will be locked and have 1" x 12" slots for insertion of confidential shredding material. The ability to unlock the bins will be assigned to Contractor's certified shredding person. Department representative may be designated to manage keys to containers.

Bins or contents of bins will be collected on a pre-arranged, regular service schedule with department. Each large full bin (174-gallon or 64-gallon) will be exchanged for an empty bin and transported via truck to Contractor's shredding facility. Contents of small bins will be transferred into a larger, locked bin by Contractor's certified shredding person and transported via truck to Contractor's shredding facility.



At Contractor's shredding facility, all contents of bins will be strip cut and baled into 2,000-pound bundles then transported to a local mill for recycling.

Contractor will maintain a secure chain of custody throughout the entire collection and shredding process.

(e) **Fourth Amendment Section 1.(a) in reference to Section 5 of the Agreement.** Fourth Amendment dated January 19, 2003 to the Agreement currently reads as follows:

(a) Section 5 of the Agreement currently reads as follows:

Compensation shall be made for services in accordance with prices stated in **Appendix B, Revision 2** of this Agreement. Payments shall be made by the City to Contractor in arrears, for completed orders or services rendered throughout the term of the contract.

No payment shall be made to Contractor until products, services or both, stated under this Agreement are received and approved by the department as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refuses to satisfy any material obligation provided for under this Agreement. In no event shall the City be liable for interests or late charge for any late payments.

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

Compensation shall be made for services in accordance with prices stated in **Appendix B, Revision 3** (to include Attachment 1, San Francisco General Hospital locations) of this Agreement. Payments shall be made by the City to Contractor in arrears, for completed orders of services rendered throughout the term of the contract.

No payment shall be made to Contractor until products, services or both, stated under this Agreement are received and approved by the department as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refuses to satisfy any material obligation provided for under this Agreement. In no event shall the City be liable for interests or late charge for any late payments.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after **June 1, 2003**.

**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**

**CONTRACTOR**

Recommended by:

**Simmba Systems LLC**

Darlene Frdm  
Signature for Department

By [Signature]

Darlene Frdm  
Printed Name

Title President

Sr. Purchaser / OCA - Purchasing  
Title and Department

Approved as to Form:

Dennis J. Herrera  
City Attorney

By [Signature]  
Deputy City Attorney

Approved:

[Signature]  
Judith A. Blackwell  
Director, Office of Contract Administration

Calculation of Charges

The following charges, as negotiated between Simmba Systems LLC and the City and County of San Francisco, shall be the payment that the Contractor is to receive for successfully undertaking, performing and complying with the services, responsibilities and requirements listed in Appendix B of this Agreement.

**1. Initial Transportation Costs (Add Lot)**

Initial pickup and transportation of file records from a City department location to Contractor's facility.

\$1.03 per box  
 \$1.03 per file  
 \$1.03 per ledger

\*First 3 items delivered free of charge, \$9.79 (per building) visitation fee applied for each new stop.

**2. Initial Filing / Labeling Costs**

Initial entry of records from City departments into Contractor's record storage system, including carton labeling, filing of record box in the storage facility and entry into Contractor's computer system.

\$1.03 per box

**3. Migration Costs**

**Any and all costs for moving City's documents from Iron Mountain to Simmba Systems LLC. Such costs will include and will be limited to Simmba's costs for pick-up, transportation, initial filing, labeling and initial entry of records into Simmba's system and facility.**

\$0.36 per box

**4. Permanent Removal Costs**

Transportation and removal costs per box delivered to a City department or other destination, which will not be returned to Simmba's system. This cost should include any inputting of information in Simmba's computer system on such a request.

Charges would be as listed in No. 7 – Retrieval  
**There is No Additional Charge for permanent removal.**

**5. Reboxing**

Transfer of records from damaged records storage box to a new flat box. The cost of reboxing includes the cost of a new flat box and all other associated costs.

Standard Sized Box (15"x12"x10")	\$3.09 per box
Letter Transfer Box (24"x12"x10")	\$4.12 per box
X-ray Box (24"x12"x10")	\$4.12 per box

Miscellaneous Storage Boxes:  
 Simmba provides any size and type of storage box for CCSF.  
 Simmba will provide storage box quotations for miscellaneous sized boxes on an as needed basis for CCSF. Heavy-duty triple walled standard size 15"x12"x10" record boxes are available from Simmba for \$1.96 per box.

## 6. Storage Charge

Monthly storage charge, standard box:

First 5 months (August 1, 2001 through January 1, 2002): free storage (for all existing boxes stored at Iron Mountain)

Next 7 months (ending July 31, 2002):	\$0.09 per box
Year 2 – Aug. 1, 2002	\$0.11 per box
Year 3 – Aug. 1, 2003	\$0.14 per box
Year 4 – Aug. 1, 2004	\$0.17 per box
Year 5 – Aug. 1, 2005	\$0.17 per box

Monthly storage charge for ledgers, and other box size (per cubic foot):

First 5 months (August 1, 2001 through January 1, 2002): free storage (for all existing boxes stored at Iron Mountain)

Next 7 months (ending July 31, 2002):	\$0.09 per box
Year 2 – Aug. 1, 2002	\$0.11 per box
Year 3 – Aug. 1, 2003	\$0.14 per box
Year 4 – Aug. 1, 2004	\$0.17 per box
Year 5 – Aug. 1, 2005	\$0.17 per box

## 7. Retrievals

### Regular Deliveries:

Retrieval and transportation of a box and/or file from Simmba's facility to requesting department:

Departments may request retrievals between 7:00 a.m. to 5:00 p.m., Monday through Friday. Requests before 10:00 a.m. must be delivered the same day at no additional charge.

Retrieval fee:	\$2.16 per box, \$2.16 per file, \$2.16 per ledger
Delivery/pickup fee:	*\$9.79 visitation fee

\*fee includes the delivery/pickup of the first 3 items - \$1.80 per additional item thereafter (same rate for box, file or ledger)

### Emergency Delivery Charge:

Retrieval and transportation of a box and/or file from Simmba's facility to requesting department within two hours of request.

\$18.84

## 8. Refile Rate

Refilng items that are returned to contractor's facility after department use.

\$1.80 per box
\$1.80 per file
\$1.80 per ledger

\*Retrieval fee is not applicable for refile service, delivery/pickup fee does apply.

**9. Destruction Rate**

Destruction of standard sized box	\$1.03 per box
Destruction of file	\$1.03 per file
Destruction of ledger	\$1.03 per ledger

\*On-site high security mulching available for \$2.58 per cubic foot.

At \$2.58 per cubic foot for shredding, the current cost per bin are as follows:

174 Gallon	40 cubic feet	\$ 103.20
64 Gallon	17 cubic feet	43.86
Console	8 cubic feet	20.64
16 Gallon	5 cubic feet	12.90

*Note:* Bin locations may increase or decrease by arrangement with Contractor and City departments at the rates listed above.

**10. Conversion Rate**

Indexing is \$0.009 per keystroke via an hourly rate.

Grade #3, manual feed, less than 500K pages	\$0.113 per page
Grade #1, high speed auto feed, over 2.5 million pages	\$0.040 per page

*Note:* Conversion is not charged via an hourly rate.

**11. Document Access Safety Features:**

There is no additional fee charged by Simmba for customized document access. Customized document access security code setup is a part of the overall service package to CCSF.

No special software is required.

**12. Work Area Costs**

Work Room	Free of Charge
Fax	\$1.03 per page
Phone	Free (less long distance range)
Photocopying	\$0.26 per page
Computer	Free

\*Simmba offers multiple on-site work areas for customers. Each work area is completely equipped with telephone; fax copy machine and a computer with Internet access. CCSF is welcome to use these work areas twenty-four hours a day, subject to availability. Simmba's staff will be available around-the-clock to provide work area clients with customer service.

\*Use of the viewing rooms is free of charge.

**Online Services**

Simmba provides customers with online services that allow them to access their file inventory and request services. Online services are accessed through Simmba's Website. No special software or hardware required.

\$41.20/per month per department

**Miscellaneous Records Management Consulting**

\$30.39 per labor hour

13. Deleted (see Third Amendment dated September 1, 2002)

14. Deleted (see Third Amendment dated September 1, 2002)

**For Department of Elections ONLY:**

15. **Per pallet retrieval fee** (For shrink wrapped unvoted ballot box pallets stored in regular storage.)

\$20.00 per pallet

16. **Re-palletization fee** (For any shrink wrapped unvoted ballot box pallets, applicable only if pallets received from Department of Elections exceed the pallet height maximum specified in the contract addendum: the fee will be equal to the per box retrieval fee of \$2.16 per box as specified in the original agreement between CCSF and Simmba Systems LLC.

17. All other associated service fees for receiving, retrieval, refile, and other types of activity requested are as listed in the original agreement between CCSF and Simmba Systems LLC.

18. **Shrink wrap fee:**

No charge

\*Except for the storage charge, all services are subject to a yearly CPI (Consumer Price Index) adjustment not to exceed five (5) percent.

**Attachment 1 – S.F. General Hospital Locations**  
(For informational purpose only)

Bin conversion to cubic feet:

174 Gallon =	40 cubic feet
64 Gallon =	17 cubic feet
Console =	8 cubic feet
16 Gallon =	5 cubic feet

Total Bin Placements:  
(Subject to SFGH Changes)

174 Gallon	4
64 Gallon	50
Console	38
16 Gallon	23

**A. MHRF (Mental Health Facility):**  
Service – Once, Every Two (2) Weeks

Bin Location	Unit(s)	Size
S0030	1	64 Gallon
S0010	1	64 Gallon
Front Lobby	1	16 Gallon
S0045	1	16 Gallon
1N Nursing Station	1	16 Gallon
2N Nursing Station	1	16 Gallon
2S Nursing Station	1	16 Gallon
3S Nursing Station	1	16 Gallon

**B. Main Hospital Building:**  
Service – Once a Week

Bin Location	Unit(s)	Size
GK2B	2	174 Gallon
GK2B	1	64 Gallon
GA2	1	Console
G110-108	1	Console
GC19	1	64 Gallon
1E5	2	Console
1E5	1	16 Gallon
1E21	1	64 Gallon
1E+28	1	64 Gallon
1B40	1	Console
1X69A	1	Console
1X69B	1	16 Gallon
1X42	1	64 Gallon

**APPENDIX B, REVISION 3**

**Attachment 1 – S.F. General Hospital Locations**  
(For informational purpose only)

1C15	1	64 Gallon
1C9	1	16 Gallon
1C31	1	16 Gallon
1N20	1	64 Gallon
1M37	1	16 Gallon
1M38	1	16 Gallon
1M21	1	Console
2A26	1	Console
2B	1	Console
2B15	3	64 Gallon
2B15	1	Console
2B21	1	64 Gallon
3B1	1	64 Gallon
3B1	1	Console
3A22	1	Console
3M16	1	Console
3D14	1	64 Gallon
3C21	1	64 Gallon
3D22	1	16 Gallon
3D	1	16 Gallon
4B24	1	Console
4D	1	16 Gallon
4E-6	1	Console
4A	1	Console
4H3	2	64 Gallon
4C	2	64 Gallon
4J-10	1	Console
4M14	1	Console
4M73	1	64 Gallon
5M5	1	64 Gallon
5A	1	64 Gallon
5B-1	1	Console
5D	1	Console
5H12	1	64 Gallon
5C	1	64 Gallon



**APPENDIX B, REVISION 3**

**Attachment 1 – S.F. General Hospital Locations**  
(For informational purpose only)

6A	1	64 Gallon
6B6	1	Console
6G1	1	64 Gallon
6G11	1	16 Gallon
6C24	1	64 Gallon
6C24 Nursing Station	1	16 Gallon
6D20	1	64 Gallon
7A17	1	Console
7M8	1	Console
7E12	1	Console
7M16	1	64 Gallon
7B14	1	Console
7B14	1	16 Gallon
7C14	1	64 Gallon
7D35	1	64 Gallon
7G	1	Console

**C. Building 20, 10, 1**  
Service – Once a Week

2112	1	Console
2103	1	Console
1314	1	64 Gallon
2300	1	64 Gallon
2300	1	Console
2407	3	64 Gallon
1420	1	64 Gallon
1520	6	64 Gallon

**D. Building 9**  
Service – Once a Week

109	1	64 Gallon
224	1	Console

**E. Building 30**  
Service – Once a Week

All laboratories	1	Console
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**APPENDIX B, REVISION 3**

**Attachment 1 – S.F. General Hospital Locations**  
(For informational purpose only)

**F. Building 90, First Floor**  
Service – Once a Week

120	1	64 Gallon
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**Building 90, Second Floor**  
Service – Once, Every Two Weeks

202	1	64 Gallon
320	1	Console
410	1	Console
507	1	Console

**G. Building 80**  
Service – Once, Every Two Weeks

131	1	16 Gallon
119C	1	16 Gallon
100	1	16 Gallon
204	1	Console
224	1	64 Gallon
319	1	64 Gallon
415	1	Console
501	1	16 Gallon
533	1	16 Gallon
623	1	Console
605	1	Console

**H. Building 100**  
Service – Once a Week

135	2	174 Gallon
No Units on Second Floor		

**I. Building 3, Third Floor**  
Service – Once a Week

105	1	64 Gallon
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**CITY AND COUNTY OF SAN FRANCISCO**

OFFICE OF CONTRACT ADMINISTRATION

PURCHASING DIVISION

**FIFTH AMENDMENT**

THIS AMENDMENT (this "Amendment") is made as of **March 31, 2003**, in San Francisco, California, by and between **Simmba Systems 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 August 1, 2001 between Contractor and City, as amended by the First Amendment dated September 11, 2001, and by the Second Amendment dated December 1, 2001, and by the Third Amendment dated September 1, 2002, and by the Fourth Amendment dated January 10, 2003.

**(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) Requiring Prohibition on Political Activity with City Funds,** Section 52 is hereby added to Agreement as follows:

**52. 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. Funds paid to Contractor for services performed hereunder and which were not for a Political Activity, are not subject to the restrictions of San Francisco Administrative Code Chapter 12.G.

(b) Requiring HIPAA, Section 53 is hereby added to Agreement as follows:

**53. HIPAA**

The parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is therefore required to abide by the Privacy Rule contained therein. The parties further agree that CONTRACTOR falls within the following definition under the HIPAA regulations:

- A Covered Entity subject to HIPAA and the Privacy Rule contained therein;
- A Business Associate subject to the terms set forth in Exhibit A;
- Not Applicable, CONTRACTOR will not have access to Protected Health Information.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after **March 31, 2003**.

**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**

**CONTRACTOR**

Recommended by:

**SIMMBA SYSTEMS LLC**

Darlene Frohm  
Signature for Department

By [Signature]

Darlene Frohm  
Printed Name

Title Partner  
04/01/03

Sr. Purchaser IocA-Purchasing  
Title and Department

Approved as to Form:

Dennis J. Herrera  
City Attorney

By [Signature]  
Deputy City Attorney

Approved:

[Signature]  
Judith A. Blackwell  
Director, Office of Contract Administration

## Exhibit A

### HIPAA Business Associate Addendum

This Exhibit contains requirements set forth in the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191 and the regulations promulgated thereunder by the U.S. Department of Health and Human Services and other applicable laws. The City and County of San Francisco, referred to in this agreement as CITY, is the Covered Entity and is referred to below as CE. The CONTRACTOR is the Business Associate, and is referred to below as Associate. The agreement between CITY and CONTRACTOR to which this Addendum is attached is referred to in this Addendum as the Contract.

This HIPAA Business Associate Addendum ("Addendum") supplements and is made a part of the contract ("Contract") by and between Covered Entity ("CE") and Business Associate ("Associate"), and is effective as of April 14, 2003.

#### RECITALS

A. CE wishes to disclose certain information to Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information ("PHI") (defined below).

B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

C. As part of the HIPAA Regulations, the Privacy Rule (defined below) requires CE to enter into a contract containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR") and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

#### 1. Definitions.

A. **Business Associate** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.

B. **Covered Entity** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.

C. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.

D. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.

E. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.

F. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 CFR Parts 160 and 164.

G. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including but not limited to, 45 CFR Section 164.501. [45 CFR §§ 160.103 and 164.501]

H. **Protected Information** shall mean PHI provided by CE to Associate or created or received by Associate on CE's behalf.

## 2. **Obligations of Associate.**

A. **Permitted Uses.** Associate shall not use Protected Information except for the purpose of performing Associate's obligations under the Contract and as permitted under the Contract and Addendum. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule is so used by CE except that Associate may use Protected Information (i) for the proper management and administration of Associate, (ii) to carry out the legal responsibilities of Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of CE. [45 CFR §§ 164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)]

B. **Permitted Disclosures.** Associate shall not disclose Protected Information except for the purpose of performing Associate's obligations under the Contract and as permitted under the Contract and Addendum. Further, Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule if disclosed by CE, except that Associate may disclose Protected Information (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate; (iii) as required by law, or (iv) for Data Aggregation purposes for the Health Care Operations of CE.

To the extent that Associate discloses Protected Information to a third party, Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Associate of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. [45CFR §§ 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

C. **Appropriate Safeguards.** Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Contract and this Addendum. [45 CFR § 164.504(e)(2)(ii)(B)] Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities.

D. **Reporting of Improper Use or Disclosure.** Associate shall notify the compliance office of CE in writing of any use or disclosure of Protected Information otherwise than as provided for by the Contract and this Addendum within five (5) days of becoming aware of such use or disclosure. [45 CFR § 164.504(e)(2)(ii)(C)]. Such notice shall be sent to: DPH Compliance Office, 2789 Twenty-fifth Street, San Francisco, CA 94110 or can be sent via e-mail to CHN\_Hotline@chnsf.org.

E. **Associate's Agents.** Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Associate with respect to such PHI. [45 CFR § 164.504(e)(2)(D)] Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation. (See 45 CFR §§ 164.530(f) and 164.530(e)(l).)

F. **Access to Protected Information.** Associate shall make Protected Information maintained by Associate or its agents or subcontractors in Designated Record Sets, if any, available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.524. [45 CFR § 164.504(e)(2)(ii)(E)]

G. **Amendment of PHI.** Within ten (10) days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, if any, Associate or its agents or subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or subcontractors, Associate must notify CE in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Associate or its agents or subcontractors shall be the responsibility of CE. [45 CFR § 164.504(e)(2)(ii)(F)]

H. **Accounting Rights.** Within ten (10) days of notice by CE of a request for an accounting of disclosures of Protected Information, Associate and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.528, as determined by CE. Associate agrees to implement a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy Rule. At a minimum such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Associate or its agents or subcontractors, Associate shall within five (5) days of request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Sections 2.b of this Addendum. [45 CFR §§ 164.504(e)(2)(ii)(G) and 165.528]

I. **Governmental Access to Records.** Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Associate's compliance with the Privacy Rule. (45 CFR § 164.504(e)(2)(ii)(H)] Associate shall provide to CE a copy of any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.

J. **Minimum Necessary.** Associate (and its agents or subcontractors) shall only request, use and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [45 CFR § 164.514(d)(3)]

K. **Data Ownership.** Associate acknowledges that Associate has no ownership rights with respect to the Protected Information.



**L. Retention of Protected Information.** Notwithstanding Section 3.c of this Addendum, Associate and its subcontractors or agents shall retain all Protected Information throughout the term of the Contract and shall continue to maintain the information required under Section 2.h of this Addendum for a period of six (6) years after termination of the Contract. (See 45 CFR §§ 164.530(j)(2) and 164.526(d).)

**M. Notification of Breach.** During the term of this Contract, Associate shall notify the Compliance Office of the CE within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which Associate becomes aware and / or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

Notification can occur through use of e-mail or by telephone. The Compliance Office E-mail address is [CHN\\_Hotline@chnsf.org](mailto:CHN_Hotline@chnsf.org) and the telephone numbers are: **(415) 642-5790 and (415) 252-3078.**

**N. Audits, Inspections and Enforcement Involving the Use of Protected Information.** Within ten (10) days of a written request by CE, Associate and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that (i) Associate and CE shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection; and (iii) CE shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Associate. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's failure to detect constitute acceptance of such practice or a waiver of CE's enforcement rights under this Contract.

### **3. Termination.**

**A. Material Breach.** A breach by Associate of any material provision of this Addendum, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the Contract by CE pursuant to Section 20 of the Contract. [45CFR § 164.504(e)(2)(iii)]

**B. Judicial or Administrative Proceedings.** CE may terminate this Contract, effective immediately, if (i) Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Associate has violated any standard or requirement of HIPAA, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

**C. Effect of Termination.** Upon termination of this Contract for any reason, Associate shall, at the option of CE, return or destroy all Protected Information that Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, Associate shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 CFR § 164.504(e)(1)(2)(I)] If CE elects destruction of the PHI, Associate shall certify in writing to CE that such PHI has been destroyed.

**4. Limitation on Liability.** Any limitations on liability set forth in the Contract shall not apply to the obligations set forth herein.

5. **Disclaimer.** CE makes no warranty or representation that compliance by Associate with this Addendum, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.

6. **Certification.** To the extent that CE determines that such examination is necessary to comply with CE's legal obligations pursuant to HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense examine Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with HIPAA, the HIPAA Regulations or this Addendum.

7. **Amendment.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the Privacy Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule or other applicable laws. CE may terminate the Contract upon thirty (30) days written notice in the event (i) Associate does not promptly enter into negotiations to amend this Addendum when requested by CE pursuant to this Section or (ii) Associate does not enter into an amendment to this Addendum providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the Privacy Rule.

8. **Assistance in Litigation or Administrative Proceedings.** Associate shall make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under this Addendum, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon a claimed violation of HIPAA, the Privacy Rule or other laws relating to security and privacy, except where Associate or its subcontractor, employee or agent is a named adverse party.

9. **No Third Party Beneficiaries.** Nothing expressed or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

10. **Effect on Contract.** Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect.

11. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.

**CITY AND COUNTY OF SAN FRANCISCO**  
OFFICE OF CONTRACT ADMINISTRATION

**FOURTH AMENDMENT**

THIS AMENDMENT (this "Amendment") is made as of **January 10, 2003**, in San Francisco, California, by and between **Simmba Systems LLC** ("Contractor"), and the **City and County of San Francisco**, a municipal corporation ("City"), acting by and through its Director of Purchasing,

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 August 1, 2001 between Contractor and City, as amended by the First Amendment dated September 11, 2001, and by the Second Amendment dated December 1, 2001, and by the Third Amendment dated September 1, 2002.

(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) **First Amendment Section 2.(a) in reference to Section 5 of the Agreement.** First Amendment dated September 11, 2001 to the Agreement currently reads as follows:

(a) Section 5 of the Agreement currently reads as follows:

Compensation shall be made for services in accordance with prices stated in Appendix B of this Agreement. Payments shall be made by the City to Contractor in arrears, for completed orders of services rendered throughout the term of the contract.

No payment shall be made to Contractor until products, services or both, stated under this Agreement are received and approved by the department as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refuses to satisfy any material obligation provided for under this Agreement.

Section 5 is hereby amended in its entirety to read as follows:

Compensation shall be made for services in accordance with prices stated in **Appendix B, Revision 1** of this Agreement. Payments shall be made by the City to Contractor in arrears, for completed orders of services rendered throughout the term of the contract.

No payment shall be made to Contractor until products, services or both, stated under this Agreement are received and approved by the department as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refuses to satisfy any material obligation provided for under this Agreement. In no event shall the City be liable for interests or late charge for any late payments.

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

Compensation shall be made for services in accordance with prices stated in **Appendix B, Revision 2** of this Agreement. Payments shall be made by the City to Contractor in arrears, for completed orders of services rendered throughout the term of the contract.

No payment shall be made to Contractor until products, services or both, stated under this Agreement are received and approved by the department as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refuses to satisfy any material obligation provided for under this Agreement. In no event shall the City be liable for interests or late charge for any late payments.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after **August 1, 2002.**

**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**

**CONTRACTOR**

Recommended by:

**SIMMBA SYSTEMS LLC**

Darlene Frohm  
Signature for Department

By [Signature]

Title PRESIDENT

Darlene Frohm  
Printed Name

Sr. Purchaser, OCA Purchasing  
Title and Department

Approved as to Form:

Dennis J. Herrera  
City Attorney

By [Signature]  
Deputy City Attorney

Approved:

[Signature]  
Judith A. Blackwell  
Director, Office of Contract Administration

APPENDIX B, REVISION 2

Calculation of Charges

The following charges, as negotiated between Simmba Systems LLC and the City and County of San Francisco, shall be the payment that the Contractor is to receive for successfully undertaking, performing and complying with the services, responsibilities and requirements listed in Appendix B of this Agreement.

1. Initial Transportation Costs (Add Lot)

Initial pickup and transportation of file records from a City department location to Contractor's facility.

- \$1.03 per box
- \$1.03 per file
- \$1.03 per ledger

\*First 3 items delivered free of charge, \$9.79 visitation fee applied for each new stop.

2. Initial Filing / Labeling Costs

Initial entry of records from City departments into Contractor's record storage system, including carton labeling, filing of record box in the storage facility and entry into Contractor's computer system.

\$1.03 per box

3. Migration Costs

Any and all costs for moving City's documents from Iron Mountain to Simmba Systems LLC. Such costs will include and will be limited to Simmba's costs for pick-up, transportation, initial filing, labeling and initial entry of records into Simmba's system and facility.

\$0.36 per box

4. Permanent Removal Costs

Transportation and removal costs per box delivered to a City department or other destination, which will not be returned to Simmba's system. This cost should include any inputting of information in Simmba's computer system on such a request.

Charges would be as listed in No. 7 – Retrieval  
**There is No Additional Charge for permanent removal.**

5. Reboxing

Transfer of records from damaged records storage box to a new flat box. The cost of reboxing includes the cost of a new flat box and all other associated costs.

- Standard Sized Box (15"x12"x10") \$3.09 per box
- Letter Transfer Box (24"x12"x10") \$4.12 per box
- X-ray Box (24"x12"x10") \$4.12 per box

Miscellaneous Storage Boxes:  
Simmba provides any size and type of storage box for CCSF.  
Simmba will provide storage box quotations for miscellaneous sized boxes on an as needed basis for CCSF. Heavy-duty triple walled standard size 15"x12"x10" record boxes are available from Simmba for \$1.96 per box.

## 6. Storage Charge

Monthly storage charge, standard box:

First 5 months (August 1, 2001 through January 1, 2002): free storage (for all existing boxes stored at Iron Mountain)

Next 7 months (ending July 31, 2002):	\$0.09 per box
Year 2 – Aug. 1, 2002	\$0.11 per box
Year 3 – Aug. 1, 2003	\$0.14 per box
Year 4 – Aug. 1, 2004	\$0.17 per box
Year 5 – Aug. 1, 2005	\$0.17 per box

Monthly storage charge for ledgers, and other box size (per cubic foot):

First 5 months (August 1, 2001 through January 1, 2002): free storage (for all existing boxes stored at Iron Mountain)

Next 7 months (ending July 31, 2002):	\$0.09 per box
Year 2 – Aug. 1, 2002	\$0.11 per box
Year 3 – Aug. 1, 2003	\$0.14 per box
Year 4 – Aug. 1, 2004	\$0.17 per box
Year 5 – Aug. 1, 2005	\$0.17 per box

## 7. Retrievals

### Regular Deliveries:

Retrieval and transportation of a box and/or file from Simmba's facility to requesting department:

Departments may request retrievals between 7:00 a.m. to 5:00 p.m., Monday through Friday. Requests before 10:00 a.m. must be delivered the same day at no additional charge.

Retrieval fee:	\$2.16 per box, \$2.16 per file, \$2.16 per ledger
Delivery/pickup fee:	*\$9.79 visitation fee

\*fee includes the delivery/pickup of the first 3 items - \$1.80 per additional item thereafter (same rate for box, file or ledger)

### Emergency Delivery Charge:

Retrieval and transportation of a box and/or file from Simmba's facility to requesting department within two hours of request.

\$18.84

## 8. Refile Rate

Refilng items that are returned to contractor's facility after department use.

\$1.80 per box
\$1.80 per file
\$1.80 per ledger

\*Retrieval fee is not applicable for refile service, delivery/pickup fee does apply.

**9. Destruction Rate**

Destruction of standard sized box	\$1.03 per box
Destruction of file	\$1.03 per file
Destruction of ledger	\$1.03 per ledger

\*On-site high security mulching available for \$2.58 per cubic foot.

**10. Conversion Rate**

Indexing is \$0.009 per keystroke via an hourly rate.	
Grade #3, manual feed, less than 500K pages	\$0.113 per page
Grade #1, high speed auto feed, over 2.5 million pages	\$0.040 per page

NOTE: Conversion is not charged via an hourly rate.

**11. Document Access Safety Features:**

There is no additional fee charged by Simmba for customized document access. Customized document access security code setup is a part of the overall service package to CCSF.

No special software is required.

**12. Work Area Costs**

Work Room	Free of Charge
Fax	\$1.03 per page
Phone	Free (less long distance rage)
Photocopying	\$0.26 per page
Computer	Free

\*Simmba offers multiple on-site work areas for customers. Each work area is completely equipped with telephone; fax copy machine and a computer with Internet access. CCSF is welcome to use these work areas twenty-four hours a day, subject to availability. Simmba's staff will be available around-the-clock to provide work area clients with customer service.

\*Use of the viewing rooms is free of charge.

**Online Services**

Simmba provides customers with online services that allow them to access their file inventory and request services. Online services are accessed through Simmba's Website. No special software or hardware required.

\$41.20/per month per department

**Miscellaneous Records Management Consulting**

\$30.39 per labor hour

**13. Deleted (see Third Amendment dated September 1, 2002)**



14. **Deleted** (see Third Amendment dated September 1, 2002)

**For Department of Elections ONLY:**

15. **Per pallet retrieval fee** (For shrink wrapped unvoted ballot box pallets stored in regular storage.)

\$20.00 per pallet

16. **Re-palletization fee** (For any shrink wrapped unvoted ballot box pallets, applicable only if palets received from Department of Elections exceed the pallet height maximum specified in the contract addendum: the fee will be equal to the per box retrieval fee of \$2.16 per box as specified in the original agreement between CCSF and Simmba Systems LLC.

17. All other associated service fees for receiving, retrieval, refile, and other types of activity requested are as listed in the original agreement between CCSF and Simmba Systems LLC.

18. **Shrink wrap fee:**

No charge

\*Except for the storage charge, all services are subject to a yearly CPI (Consumer Price Index) adjustment not to exceed five (5) percent.

**THIRD AMENDMENT**

THIS AMENDMENT (this "Amendment") is made as of September 1, 2002 in San Francisco, California, by and between **Simmba Systems LLC** ("Contractor"), and the **City and County of San Francisco**, a municipal corporation ("City"), acting by and through its Director of Purchasing,

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 August 1, 2001 between Contractor and City, as amended by the First Amendment, dated September 11, 2001, and the Second Amendment, dated December 1, 2001.

(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) Appendix A, Section A.1.4 is hereby deleted in its entirety.

(b) Appendix B, Revision 1, Sections 13 and 14 are hereby deleted in their entirety.

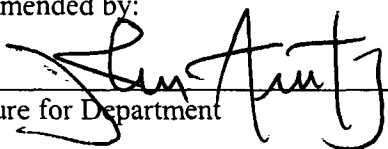
**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after September 1, 2002.

**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**

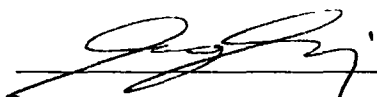
Recommended by:

  
\_\_\_\_\_  
Signature for Department

John Arntz  
Acting Director, Department of Elections

**CONTRACTOR**

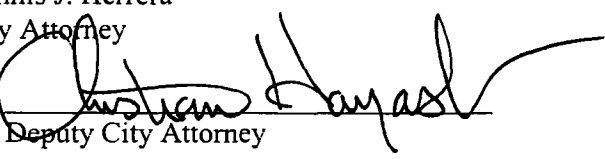
Simmba Systems, LLC

By   
\_\_\_\_\_

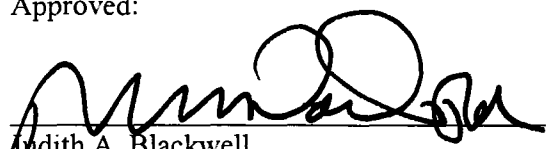
Title PRESIDENT

Approved as to Form:

Dennis J. Herrera  
City Attorney

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

Approved:

  
\_\_\_\_\_  
Judith A. Blackwell  
Director, Office of Contract Administration

**CITY AND COUNTY OF SAN FRANCISCO**  
OFFICE OF CONTRACT ADMINISTRATION

**SECOND AMENDMENT**

THIS AMENDMENT (this "Amendment") is dated for convenience on December 1, 2001, in San Francisco, California, by and between **Simmba Systems LLC** ("Contractor"), and the **City and County of San Francisco**, a municipal corporation ("City"), acting by and through its Director of Purchasing.

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 Agreement:

(a) **Agreement.** The term "Agreement" shall mean the Agreement dated August 1, 2001 between Contractor and City as amended by the First Amendment dated September 11, 2001.

(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) Appendix A is amended to include a new Section A.1.4 to read as follows:

4. Storage and Security for Election Materials

a. **Voted Ballots.** Contractor shall store all Voted Ballots and Related Election Materials (hereafter referred to as "Voted Ballots") in a separate, secure storage cage (hereafter "Elections Cage"). Contractor shall take all reasonable and necessary steps to preserve and secure Voted Ballots. No person other than authorized personnel identified in a list prepared and signed by the City Director of Elections may access such Elections Cage or retrieve Voted Ballots stored therein, unless, in the case of Contractor's employees, access is given under the personal supervision of authorized personnel identified in the list prepared and signed by the Director of Elections. Contractor shall require such authorized personnel to produce valid Department of Elections identification cards before granting entry to the Elections Cage. Contractor shall implement customized document access procedures for all Voted Ballots. Such procedures shall include, but not be limited to, creation of a customized document access process and creation and maintenance of an access log identifying the date, time, name and purpose for all instances in which authorized personnel gain access to the Elections Cage or retrieve Voted Ballots therefrom. Contractor shall take all reasonable and necessary steps to ensure that no person other than the Director of Elections or the Director's designee opens any sealed Voted Ballots.

b. **Unvoted Ballots.** Unvoted Ballots shall be stored on pallets in the warehouse. Contractor shall not remove Unvoted Ballots from such pallets, in order to facilitate retrieval, unless under supervision of authorized personnel identified in the list prepared and signed by the Director of Elections. Contractor reserves the right to remove and restack Unvoted Ballot boxes from pallets during the initial receiving and barcoding of such Unvoted Ballot boxes, and/or during the retrieval process of Unvoted Ballot boxes which are currently stored in the Elections Cage, whereby these Unvoted Ballot boxes may be placed on pallets for purposes of placing them in regular storage, at the Direction of Elections' discretion. Any future Unvoted Ballots received from the Department of Elections on pallets for purposes of placing pallets in regular storage within Contractor's facility, will not be stacked higher than 42 inches high, including the pallet.

(b) Appendix B, Revision 1 is amended to include Sections 13 – 18 to read as follows:

13. Security cage storage: \$6,000 / month flat fee for exclusive use and access of Simmba's 30'L x 20'W x 7.5'H security cage

14. Short-term overflow vault storage: \$1,000 / month flat fee per vault side used

15. Per pallet retrieval fee for shrink wrapped unvoted ballot box pallets stored in regular storage: \$20.00 / pallet

16. Re-palletization fee for any shrink wrapped unvoted ballot box pallets, applicable only if pallets received from Department of Elections exceed the pallet height maximum specified in the contract addendum: the fee will be equal to the per box retrieval fee of \$2.10 per box as specified in the original agreement between CCSF and Simmba Systems LLC

17. All other associated service fees for receiving, retrieval, refile, and other types of activity requested are as listed in the original agreement between CCSF and Simmba Systems LLC

18. Shrink wrap fee: no charge

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

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.

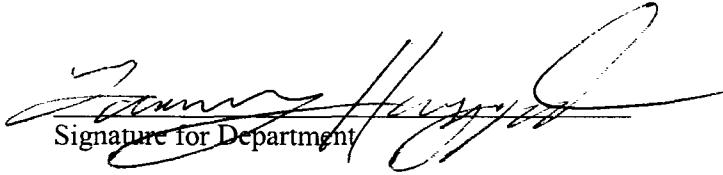
IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.


**CITY**

**CONTRACTOR**

Recommended by:

Simmba Systems LLC

  
Signature for Department

By   
Title VICE PRESIDENT

Tammara Kayle  
Printed Name

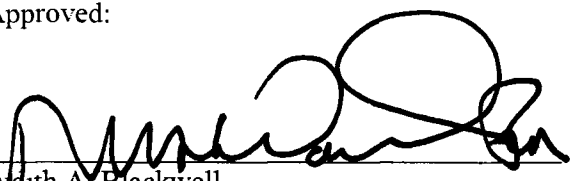
DIRECTOR OF ELECTIONS  
Title and Department

Approved as to Form:

Dennis J. Herrera  
City Attorney

By   
Deputy City Attorney

Approved:

  
Judith A. Blackwell  
Director, Office of Contract Administration

**CITY AND COUNTY OF SAN FRANCISCO**  
PURCHASING DEPARTMENT

**“FIRST AMENDMENT”**

THIS AMENDMENT (this “Amendment”) is made as of **September 11, 2001**, in San Francisco, California, by and between **Simmba Systems LLC** (“Contractor”), and the **City and County of San Francisco**, a municipal corporation (“City”), acting by and through its Director of Purchasing,

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 August 1, 2001 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 5 of the Agreement currently reads as follows:

Compensation shall be made for services in accordance with prices stated in Appendix B of this Agreement. Payments shall be made by the City to Contractor in arrears, for completed orders of services rendered throughout the term of the contract.

No payment shall be made to Contractor until products, services or both, stated under this Agreement are received and approved by the department as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refuses to satisfy any material obligation provided for under this Agreement.

Section 5 is hereby amended in it’s entirety to read as follows:

Compensation shall be made for services in accordance with prices stated in **Appendix B, Revision 1** of this Agreement. Payments shall be made by the City to Contractor in arrears, for completed orders of services rendered throughout the term of the contract.

No payment shall be made to Contractor until products, services or both, stated under this Agreement are received and approved by the department as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refuses to satisfy any material obligation provided for under this Agreement. In no event shall the City be liable for interests or late charge for any late payments.

- (b) Requiring Health Benefits for Employees, Section 50 is hereby added to Agreement as follows:

**50. Requiring Health Benefits for Employees.** Section 50 is hereby added to the Agreement, as follows:

Unless exempt, 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 Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the web at [www.ci.sf.ca.us/HCAO](http://www.ci.sf.ca.us/HCAO). 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(d) 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(f)(1-5). 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 Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department 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 compliance or anticipated compliance 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 keep itself informed of the current requirements of the HCAO.
  - (h) 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.
  - (i) 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 five business days to respond.
  - (j) City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
  - (k) 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.
- (c) Requiring Notification of Limitations on Contributions. Section 51 is hereby added to the agreement.

**51. Notification of Limitations on Contributions**

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.

3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after **September 11, 2001.**
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.

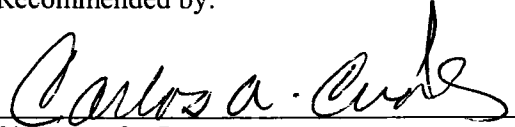
IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

**CITY**

**CONTRACTOR**

Recommended by:

**SIMMBA SYSTEMS LLC**

  
Signature for Department

By 

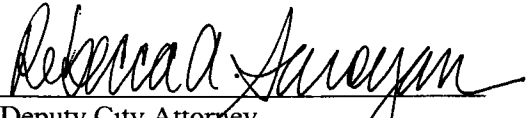
CARLOS A. CHAVEZ  
Printed Name

Title VP, Simmba Systems

Sonia Porelason, Office of Contract Administration/Purchasing  
Title and Department

Approved as to Form:

Louise H. Renne  
City Attorney

By   
Deputy City Attorney

Approved:

  
Judith A. Blackwell  
Director, Office of Contract Administration

## APPENDIX B, REVISION 1

### Calculation of Charges

The following charges, as negotiated between Simmba Systems LLC and the City and County of San Francisco, shall be the payment that the Contractor is to receive for successfully undertaking, performing and complying with the services, responsibilities and requirements listed in Appendix B of this Agreement.

**1. Initial Transportation Costs (Add Lot)**

Initial pickup and transportation of file records from a City department location to Contractor's facility.

\$1.00 per box  
\$1.00 per file  
\$1.00 per ledger

\*First 3 items delivered free of charge, \$9.50 visitation fee applied for each new stop.

**2. Initial Filing / Labeling Costs**

Initial entry of records from City departments into Contractor's record storage system, including carton labeling, filing of record box in the storage facility and entry into Contractor's computer system.

\$1.00 per box

**3. Migration Costs**

**Any and all costs for moving City's documents from Iron Mountain to Simmba Systems LLC. Such costs will include and will be limited to Simmba's costs for pick-up, transportation, initial filing, labeling and initial entry of records into Simmba's system and facility.**

**\$0.35 per box**

**4. Permanent Removal Costs**

Transportation and removal cost per box delivered to a City department or other destination, which will not be returned to Simmba's system. This cost should include any inputting of information in Simmba's computer system on such a request.

Charges would be as listed in No.7-Retrieval **There is No Additional Charge for permanent removal.**

**5. Reboxing**

Transfer of records from damaged records storage box to a new flat box. The cost of reboxing includes the cost of a new flat box and all other associated costs.

Standard Sized Box (15"x12"x10")      \$3.00 per box  
Letter Transfer Box (24"x12"x10")      \$4.00 per box  
X-ray Box (24"x12"x10")              \$4.00 per box

**Miscellaneous Storage Boxes:**

Simmba provides any size and type of storage box for CCSF.

Simmba will provide storage box quotations for miscellaneous sized boxes on an as needed basis for CCSF. Heavy-duty triple walled standard size 15"x12"x10" record boxes are available from Simmba for \$1.90 per box.

**6. Storage Charge**

Monthly storage charge, standard box:

First 5 months: free storage (for all existing boxes stored at Iron Mountain)

Next 7 months:	\$0.09 per box
Year 2	\$0.11 per box
Year 3	\$0.14 per box
Year 4	\$0.17 per box
Year 5	\$0.17 per box

Monthly storage charge for ledgers, and other box size (per cubic foot):

First 5 months: free storage (for all existing boxes stored at Iron Mountain)

Next 7 months:	\$0.09 per box
Year 2	\$0.11 per box
Year 3	\$0.14 per box
Year 4	\$0.17 per box
Year 5	\$0.17 per box

**7. Retrievals**

**Regular Deliveries:**

Retrieval and transportation of a box and/or file from Simmba's facility to requesting department:

Departments may request retrievals between 7:00 a.m. to 5:00 p.m., Monday through Friday. Requests before 10:00 a.m. must be delivered the same day at no additional charge.

Retrieval fee: \$2.10 per box, \$2.10 per file, and \$2.10 per ledger

Delivery/pickup fee: \*\$9.50 visitation fee

\*fee includes the delivery/pickup of the first 3 items-\$1.75 per additional item thereafter (same rate for box, file or ledger)

**Emergency Delivery Charge:**

Retrieval and transportation of a box and/or file from Simmba's facility to requesting department within two hours of request. \$18.00

**8. Refile Rate**

Refiling items that are returned to contractor's facility after department use.

\$1.75 per box
\$1.75 per file
\$1.75 per ledger

\*Retrieval fee is not applicable for refile service, delivery/pickup fee does apply.

**9. Destruction Rate**

Destruction of standard sized box	\$1.00 per box
Destruction of file	\$1.00 per file
Destruction of ledger	\$1.00 per ledger

\*On-site high security mulching available for \$2.50 per cubic foot.

**10. Conversion Rate**

Indexing is \$0.009 per keystroke via an hourly rate. Grade #3, manual feed, less than 500K pages \$0.111 per page.

Grade #1, high speed auto feed, over 2.5 million pages \$0.039 per page

NOTE: Conversion is not charged via an hourly rate.

**11. Document Access Safety Features:**

There is no additional fee charged by Simmba for customized document access. Customized document access security code setup is a part of the overall service package to CCSF.

No special software is required.

**12. Work Area Costs**

Work Room	Free of Charge
Fax	\$1.00 per page
Phone	Free (less long distance rate)
Photo copying	\$0.25 per page
Computer	Free

\*Simmba offers multiple on-site work areas for customers. Each work area is completely equipped with telephone, fax copy machine and a computer with Internet access. CCSF is welcome to use these work areas twenty-four hours a day, subject to availability. Simmba's staff will be available around-the-clock to provide work area clients with customer service.

\*Use of the viewing rooms is free of charge.

**Online Services**

Simmba provides customers with online services that allow them to access their file inventory and request services. Online services are accessed through Simmba's Website. No special software or hardware required. 40.00/per month per department

**Miscellaneous Records Management Consulting**

\$29.50 per labor hour

\*Except for the storage charge, all services are subject to a yearly CPI (Consumer Price Index) adjustment no to exceed five (5) percent.