

City and County of San Francisco Purchasing Department
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685

Agreement between the City and County of San Francisco and

Simmba Systems LLC

This Agreement is made this 1st day of August, 2001, in the City and County of San Francisco, State of California, by and between Simmba Systems LLC, 1150 Ballena Blvd #250, Alameda, CA 94501, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of Purchasing or the Director's designated agent, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the City and County of San Francisco wishes to purchase Records Storage and Management Services; and,

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and.

WHEREAS, the Purchasing Department has conducted a public bidding process advertised as Request for Proposal 93300, and

WHEREAS, The Purchasing Department has designated this contract as Term Contract 93300.

Now, THEREFORE, the parties agree as follows

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

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

3. Effective Date of Agreement

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

4. Services Contractor Agrees to Perform

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

5. Compensation

Compensation shall be made 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 and materials rendered throughout the term of the contract.

No payment shall be made to Contractor until materials, 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.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by department as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Form 7, "Prime Consultant/Joint Venture Partner(s) and Sub-consultant Participation Report." If HRC Form 7 is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Form 7 is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Form 7 is provided

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Form 9, "Sub-Consultant Payment Affidavit," verifying that all subcontractors have been paid and specifying the amount

6. Guaranteed Maximum Costs

(a) The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification

(b) Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law

(c) Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller

(d) The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation

7. Payments; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. All amounts paid by City to Contractor shall be subject to audit by City

Payment shall be made by City to Contractor at the address specified in Section 25, entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City, or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim

9. Disallowance-Left blank by agreement of the parties

10. Taxes

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

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

- (1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.
- (2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
- (3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.
- (4) Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work

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

12. Qualified Personnel

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

13. Responsibility for Equipment

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

14. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor:** Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor is liable for the acts and omissions of itself, its employees and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained.

b. **Payment of Taxes and Other Expenses:** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

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

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

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

- (1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees
- (2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

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

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

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

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

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

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

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

16. Indemnification

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, resulting directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, the use of Contractor's facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement

17. Incidental and Consequential Damages

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

18. Liability of City

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

19. Liquidated Damages

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine, further, Contractor agrees that the sum of One Hundred Dollars (\$100.00) per hour for each hour of delay beyond scheduled times is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages

sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by Purchasing.

20. Default; Remedies

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

- (1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement. 8, 10, 15, 24, 30, 37, or 49.
- (2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice thereof from City to Contractor.
- (3) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.
- (4) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor

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

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

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

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

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

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

- (1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of ten percent (10%) of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5 percent (5%) of such cost.
- (3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.
- (4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

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

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice, (2) any claim which City may have against Contractor in connection with this Agreement, (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d), and (4) in instances in which, in

the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

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

22. Rights and Duties Upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8, 9, 10, 11, 13, 14, 16, 17, 18, 24, 25, 26, 27, 28, 30, 43, 45 through 48, and 50

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

23. Conflict of Interest

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

24. Proprietary or Confidential Information of City

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

25. Notices to the Parties

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

To City Purchasing Department

One Dr. Carlton B Goodlett Place, Room 430
San Francisco, CA 94102-4685
Attn Judith Blackwell
Fax. (415) 554-6717

To Contractor: Simmba Systems LLC
1150 Ballena Blvd. #250
Alameda, CA 94501
Fax (510) 521-3972

Any notice of default must be sent by registered mail.

26. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. Minority/Women/Local Business Utilization; Liquidated Damages

a. Compliance

Contractor understands and agrees to comply fully with all provisions of Chapter 12D.A ("Minority/Women/Local Business Utilization Ordinance--IV") of the San Francisco Administrative Code and agrees to include this paragraph in all subcontracts made in fulfillment of the Contractor's obligations under this Agreement. Said provisions are incorporated herein by reference and made a part of this Agreement as though fully set forth. Contractor's willful failure to comply with Chapter 12D.A is a material breach of contract.

b. Enforcement

If Contractor willfully fails to comply with any of the provisions of Chapter 12D.A. the rules and regulations implementing Chapter 12D.A. or the provisions of this Agreement pertaining to MBE or WBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or ten percent (10%) of the total amount of this Agreement, or one thousand dollars (\$1,000), whichever is greatest. The Director of the City's Human Rights Commission (HRC) may also impose other sanctions against Contractor authorized in Chapter 12D.A. including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's MBE or WBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to §12D.A.16C

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with Chapter 12D.A for a period of three years following termination of this contract

c. Subcontracting Goals

The MBE/WBE subcontracting participation goal for this contract is 0% Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in HRC Form 6. Failure to provide HRC Form 6 with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until HRC Form 6 is provided by Contractor

Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in Chapter 12D.A. for any purpose inconsistent with the provisions of Chapter 12D.A. its implementing rules and regulations, or this Section.

d. Subcontract Language Requirements

Contractor shall include in all subcontracts with MBEs or WBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any MBE or WBE subcontractor if Contractor does not fulfill its commitment to use the MBE or WBE subcontractor. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with Chapter 12D.A for a period of three years following termination of this contract

e. Payment of Subcontractors

Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement.

Contractor further agrees, within ten working days following receipt of payment from the City, to file an affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §12D.A.16.

32. Nondiscrimination; Penalties

a Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Contractor

b Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the S.F. Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the S.F. Administrative Code

d Condition to Contract

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the S.F. Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §12B.2(h) of the S.F. Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor

33. MacBride Principles—Northern Ireland

Pursuant to S.F. Administrative Code §12.F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section

34. Tropical Hardwood and Virgin Redwood Ban

Pursuant to S.F. Administrative Code §12L.5(b), the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

35. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

36. Resource Conservation; Liquidated Damages

Chapter 21A of the S.F. Administrative Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 21A will be deemed a material breach of contract.

In the event Contractor fails to comply in good faith with any of the provisions of Chapter 21A, Contractor will be liable for liquidated damages in an amount equal to Contractor's net profit under this Agreement, or five percent (5%) of the total contract amount, whichever is greater. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to City upon demand and may be offset against any monies due to Contractor from any contract with City.

37. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

38. Sunshine Ordinance

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

39. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

40. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter

41. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than twenty percent (20%)

42. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

43. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

44. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

45. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 41.

46. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time

47. Severability

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

48. Minimum Compensation Ordinance

The Minimum Compensation Ordinance went into effect October 8, 2000. 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

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 this 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 Requirement of the MCO shall constitute a material breach by Contractor of the terms of this Contract. The City, acting through its Contracting Department, shall determine whether such a breach has occurred
- c. If, within 30 days after receiving written notice of a breach of this Contract 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 Contractors 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 of 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

49. Earned Income Credit (EIC) Forms

Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

- a. Contractor shall provide the Earned Income Credit (EIC) Forms to each Eligible Employee at each of the following times. (i) within thirty (30) days following the date on which the applicable Contract or Contract Amendment becomes effective (unless Contractor has already provided such EIC forms at least once during the calendar year in question). (ii) promptly after any Eligible Employee is hired by Contractor, and (iii) annually between January 1 and January 31 of each calendar year during the term of the Contract
- b. Failure to comply with the foregoing requirement shall constitute a material breach by Contractor of the terms of the Contract

- c. If within 30 days after the Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days. Contractor fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion; the City may pursue any rights or remedies available under the terms of the Contract or under applicable law

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

CITY

Recommended by:

Marybeth Long
Signature for Department

Marybeth Long
Printed Name

Senior Purchaser
Title and Department

Approved as to Form:

Louise H. Renne
City Attorney

By D. V. Singh
Deputy City Attorney

Approved:

[Signature]
Director of Purchasing

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.

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

[Signature]
Authorized Signature

GREG CUMISKEY
Printed Name

VICE PRESIDENT
Title

SIMMBA SYSTEMS LLC
Company Name

1150 BALLENA BLVD. SUITE 250
Address

ALAMEDA, CA 94501
City, State, ZIP

(510) 749-4994
Phone Number

943293738F
Federal Employer ID Number

APPENDICES

- A. Services to be provided by Contractor
- B. Calculation of Charges
- C. Insurance Certificate
- D. Company Information

Appendix A

Services to be Provided by Contractor

1. Description of Services

Contractor agrees to perform all services in accordance with the terms and conditions of City and County of San Francisco Request for Proposal 93300.

The Services to be performed on this contract are detailed in the documents, which comprise Appendix A:

- I. Contractor Responsibility
- II. Minimum Requirements

Section I. Contractor Responsibility and Section II. Minimum Requirements remain unchanged and are attached here as they appeared in RFP 93300.

Contractor agrees to perform said services all in accordance with the terms incorporated by reference as though fully set forth herein.

2. Reports

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

3. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison will be with the **Purchasing Department**. Contact Violet Lee-Fong, (415) 554-6734

I. CONTRACTOR RESPONSIBILITY

1. Minimum Responsibilities

- 1.1 The contractor shall be independent and, as such, the hiring, bonding, training, equipping, supervising, directing and discharging of their employees shall be the responsibility of the contractor. The payment of federal, state and local taxes and overtime wages shall also be the responsibility of the contractor.
- 1.2 Any work done by the contractor, as in the case of conversion services, that does not meet quality standards as determined by the City department, shall be re-done by the contractor at no cost to the City. In the event contractor repeatedly submits work not meeting quality standards, the Purchaser reserves the right to terminate the contract in whole or in part.
- 1.3 The contractor shall submit quarterly reports during the contract period. All reports must be submitted within ten (10) working days of the end of the quarter on disk/spreadsheet format (Excel or Lotus 1-2-3). The report must be in a format acceptable to the City. The Contractor must be prepared to handle multiple sub-accounts as each City department shall be empowered through this agreement to enter into a departmental purchase agreement and to place service requests directly. The quarterly reports must be by City department, and included the following information per department.
 - a. the number (quantity) of storage containers
 - b. the location of storage containers
 - c. the number of requests for pickup and delivery
 - d. the number of requests for conversion services and the additional number of storage containers needed as a result of the conversion requests
 - e. the request for destruction and/or recycling of records

Purchasing may require contractor(s) to submit reports, as described above, any time during the contract period or extension thereof.

Contractor shall send reports to:

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

2. Pick-up/Delivery

- 2.1 The contractor may be notified by e-mail, telephone or fax when a department requests a delivery. Requests that are made by 5:00 p.m. will be delivered the next business day.

The contractor shall be responsible for the handling of all City and County of San Francisco furnished documents and materials in a safe and diligent manner. The contractor shall also be responsible for any loss or damage to City documents and materials incurred during transport, handling or delivery.

If a requested service requires additional time to complete, other than that which was first agreed upon with the user department, the contractor must notify the user department immediately and reschedule delivery.
- 2.2 The contractor shall provide such backup vehicles and personnel as required to respond to multiple delivery locations on the same day. Contractor response to vehicle breakdowns, or accidents

involving vehicles transporting City and County documents and materials, must be made to ensure the delivery of City and County materials within the time stipulated.

- 2.3 After acceptance of properly authorized conversion requests, and the successful completion of the project, the contractor must return all copies of material supplied to them. Their respective authors retain all rights to the documents, and the contractor is not to disclose, retain, release, reproduce or dispose of the material, except as expressly requested, in writing, by the properly authorized City department employee.

3. Problems and Dispute Resolution

Problem Resolution:

Contractor shall correct all service problems (delivery, conversion etc) identified by the City departments using the following guidelines.

Level One

Contractor shall initiate work on Level One problems within twenty-four (24) hours of call for resolution, and work continuously on these issues until resolved or as otherwise agreed by parties. Contractor agrees that Level One problems will be assigned the highest priority, and that the completion of the service will be achieved on a most urgent basis.

Level Two

Contractor shall initiate work on Level Two problems within forty-eight (48) hours of call for resolution, and continue working on these issues until resolved or otherwise agreed by the parties

Level Three/Level Four

Contractor shall respond by telephone within four (4) hours after notification of Level Three or Level Four problems during normal business hours, or 9:00 a.m the next business day if notification is out of normal day business hours Contractor shall begin work on Level Three problems within three (3) business days of notification, and within four (4) business days on Level Four problems It is expected that contractor will normally begin work on Level Three and Level Four problems much earlier than obligated by the contract

Dispute Resolution

Contractor and City agree to resolve disputes informally to the maximum extent possible Contractor and City agree to negotiate all matters of joint concern in good faith, with the intention of resolving issues between them in a mutually satisfactory manner. In the event that a dispute arises between contractor and City, which cannot be resolved in the normal course, contractor and the City agree to the following procedure before undertaking any litigation

Step 1

Within ten (10) business days of a written request by either party, the City department's representative and the contractor's Service Representative or Account Manager shall meet to resolve the issue(s)

Step 2

If they cannot resolve the issue(s) within five (5) business days of the meeting, the issue(s) shall be submitted to the City's Purchaser and the contractor's Service Manager.

Step 3

If they cannot resolve the issue(s) within five (5) business days of its submission, then the parties agree to submit the issue(s) to the Director of Purchasing for final resolution.

II. MINIMUM REQUIREMENTS

1. Contractor must have a minimum of two (2) years of relevant experience. Contractor must be located within easy access of the City and County of San Francisco in order to provide daily records storage and management, quick access in case of an emergency, and for the convenience of customer will-call requests.
2. Contractor must have a twenty-four (24) hour emergency contact, and if not in the (415) area code, an (800) phone number. Contractor must be able to respond to any Citywide emergency within four (4) hours.
3. The contractor will provide and supervise qualified personnel, as required, to provide City departments with records storage and management. The contractor will assume all costs, including personnel salaries, bonding, training and any other. The contractor will provide and supervise qualified personnel, as required, to provide expenses for their employees. **All costs to the City shall be itemized and included in prices entered in Appendix B.**
4. The contractor must comply with Federal Executive Order 13101, Sept. 1998, which requires mandatory use of 30% recycled post-consumer waste copier and bond paper on any requested City Project.

This order makes mandatory the implementation of the use of 30% recycled post-consumer waste copier and bond paper.

The City and County of San Francisco will consider a recycled product for printing services, made with recovered materials whenever they meet or exceed the requirements in the City Ordinance, Chapter 21A-Resource Conservation. The recycled paper products must contain the minimum percentage of post-consumer recovered materials as defined in the City Ordinance. The minimum percentage of recovered material for bond paper products, as described in Section 12A.2 and Definitions are as follows:

High-grade, bleached printing Or writing (office) paper	50% waste paper, of which 30% of the total weight of the paper is post-consumer material
Cotton fiber paper	40% post-consumer material

This Ordinance applies to all paper products, including copier paper; bond paper.

Appendix B
Calculation of Charges

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, but will not be limited to, City's permanent removal charge from Iron Mountain, and Simmba's costs for pick-up, transportation, initial filing, labeling and initial entry of records into Simmba's system and facility.

\$4.24 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
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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

Appendix C

Insurance Certificate

City and County of San Francisco
Purchasing Department

AWARD

Contract #93300

RECORDS STORAGE AND MANAGEMENT
For the Term August 1, 2001 through July 31, 2006

COMPANY INFORMATION

Vendor Name:	Simmba Systems LLC
Address:	1150 Ballena Boulevard, Suite 250
City,State,Zip:	Alameda, CA 94501
Contact:	Greg Cumisky
Telephone No.:	(510) 749-4994 (800) 932-3006
Fax No.:	(510) 521-3972
Emergency 24-Hour Phone No.	(510) 749-4994
Payment Terms:	Net 30
Federal Tax ID No.:	943293738F
Vendor No:	50654
Blanket Purchase Order:	BPSF00001816
e-mail:	CCSF@Simmba.com
Website:	www.simmba.com

Appendix D

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Company Information