

**70881-A, Backup fuel contract
Golden Gate Petroleum's Prices**

Line item	Fuel	Type	Delivered to	Quantity (gallons)	±	Mark-up or mark-down from OPIS Pad 5 average, per gallon (cents)
1	Diesel	ultra-low-sulfur CARB	San Francisco (Muni buses)	6,200,000	+	2
2	Gasoline	regular, with ethanol	San Francisco	8,500 or more	+	1
3				5,800 to 8,499	+	4
4				3,200 to 5,799	+	8
5	Gasoline	premium, with ethanol	San Francisco	8,500 or more	+	1
6				5,800 to 8,499	+	4
7				3,200 to 5,799	+	9
8	Diesel	#2, not Muni buses	San Francisco	7,500 or more	+	2
9				5,800 to 7,499	+	5
10				3,200 to 5,799	+	9
11	Biodiesel	B20	San Francisco	7,500 or more	+	4
12				3,200 to 7,499	+	10
13				less than 3,200	+	17
14	Gasoline	regular, with ethanol	San Mateo County	8,500 or more	+	1.5
15				5,800 to 8,499	+	4.5
16				3,200 to 5,799	+	9.5
17	Gasoline	premium, with ethanol	San Mateo County	3,200 to 5,800	+	9.5

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Line item	Fuel	Type	Delivered to	Quantity (gallons)	±	Mark-up or mark-down from OPIS Pad 5 average, per gallon (cents)	
18	Diesel	#2	San Mateo County	7,500 or more	+	2.5	
19				5,800 to 7,499	+	5.5	
20				3,200 to 5,799	+	9.5	
21	Diesel	#2, with red dye	San Mateo County	less than 3,200	+	17	
22	Gasoline	regular, with ethanol	East Bay	3,200 to 5,800	+	10	
23	Diesel	#2	East Bay	7,500 or more	+	3	
24				5,800 to 7,499	+	6	
25				3,200 to 5,799	+	10	
26	Additional mark-up for any delivery less than the lowest amounts noted above. Specify product, price and size range of smaller deliveries.						
		all product less than 3,200 gallons			+	10	
						over 3,200 to 5,799 gallon price	

Bid specifications and conditions

This document contains as much of the Bid Conditions document as applies to the final contract. Omitted paragraphs are noted to preserve the paragraph numbering between the bid conditions and this document.

- 1. **omitted**
- 2. **omitted**
- 3. **Diesel fuel, biodiesel and biodiesel mixture**

- a. **Moving from Diesel #2 to Biodiesel**

The City is in the middle of a pilot program to buy more biodiesel and less diesel #2. It is difficult to provide data on the estimated demand for either product.

- a. **Technical Specifications, CARB #2 Ultra-Low Sulfur Fuel – Muni Coaches Only**

This specification describes the requirements for the supply of **CARB #2 Ultra-Low Sulfur Fuel**. The fuel shall be compatible for use with Cummins and Detroit diesel engines and approved by these manufacturers for use with their engines. The ultra-low sulfur diesel fuel shall in no way harm existing and future diesel engines. The diesel fuel shall be a petroleum distillate conforming to ASTM-D975 and shall have the minimum and/or maximum characteristics described below. **Muni uses CARB #2 Ultra-Low Sulfur blend and Central Shops will begin using this product by June 2006.**

The fuel shall be CARB #2 diesel fuel with a maximum sulfur content of 15 ppm and have the following characteristics:

Property	Units	Specification	Test Method
Sulfur	ppm	15 Max	ASTM D-2622
Fluidity	° F	32/15	ASTM D-2500
Cloud Point sum/wint	SL BOCLE #		
Lubricity			

- b. **Technical Specifications, CARB Diesel #2 - Other Locations.**

Property	Method of Test	Value
A.P.I. gravity, minimum	D-287	33
Flash point, Pensky-Martens minimum (or legal minimum if higher), ° F	D-93	125
Cloud F, maximum	D-2500	24
Total sulfur, % maximum	D-129	0.05
Copper corrosion, 3 hours @ 212° F, maximum	D-130	No. 3
Viscosity, Kinematic centistokes @ 100° F	D-445	2.0 - 4.1

Odor	n/a	Non-offensive
Water and sediment, % maximum	D-1796	0.05
Carbon residue, on 10% Residium, Ramsbottom maximum	D-524	0.20
Distillation: 90% recovery maximum	D-86	625
Ash, % maximum	D-482	0.01
Cetane number, minimum	D-613	45
BTU per gallon, minimum (gross)	n/a	137,000
Aromatic hydrocarbon content, % maximum by volume	D-1314-84	10
Polycyclic aromatic content, % maximum by weight	D-2425-8	1.4

All methods of test listed above for CARB Diesel #2 are the latest A.S.T.M. unless otherwise specified. Diesel fuel delivered pursuant to these specifications shall meet all the requirements of A.S.T.M. D-975 for diesel fuel except as noted otherwise above.

Diesel fuel shall fully comply with the CARB regulations for Aromatic Hydrocarbon content, including the provision for CARB certified equivalent formulations (CARB Regulations, Title 13, Section 2282). Diesel fuel shall also comply with CARB regulations for sulfur content (CARB Regulations, Title 13, Section 2281).

c. Technical Specifications, Biodiesel and Biodiesel Mixture

The fuel shall be compatible for use with Cummins and Detroit diesel engines. The biodiesel and biodiesel mixture fuel shall in no way harm existing and future diesel engines. All biodiesel and all biodiesel blended in a biodiesel mixture shall conform to ASTM-D 6751. All petroleum distillate diesel fuel blended in a biodiesel mixture shall be CARB #2 Ultra-Low Sulfur Fuel and shall conform to the technical specifications set forth herein.

“Biodiesel” means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of ASTM D 6751. Biodiesel, as defined in ASTM D 6751, is registered with the US EPA as a fuel and a fuel additive under Section 211(b) of the Clean Air Act.

“Biodiesel mixture” means a blend of biodiesel with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend. Biodiesel mixture shall have the definition established in the American Jobs Creation Act of 2004 (the “Act”).

As of this date, there is no separate ASTM specification for biodiesel mixtures. ASTM is working on a specification for biodiesel mixtures up to B20. When ASTM adopts such a specification, vendor’s biodiesel mixtures shall meet the specification.

Vendor shall blend all biodiesel mixtures in accordance with industry standards to ensure a thoroughly blended biodiesel mixture that does not separate over time.

All biodiesel mixtures shall have the minimum and maximum characteristics described below, unless agreed to otherwise in writing by City Department in advance.

The petroleum-based diesel fuel used in all biodiesel blends shall be CARB #2 Ultra-Low Sulfur fuel that conforms to the requirements set forth in Technical Specifications, Ultra-Low Sulfur Diesel above. Vendor shall inform the department prior to delivery whenever there is a new source of biodiesel feedstock and shall include the Certificate of Analysis from the

biodiesel producer. The Certificate of Analysis shall include Cloud Point; Acid Number; and total and Free Glycerides. The department reserves the right to refuse any delivery of a biodiesel blend that does not meet appropriate industry standard data points for items covered by the Certificate of Analysis.

4. Delivery requirements for biodiesel, biodiesel mixture and diesel fuel

The Municipal Railway operates about 600 diesel buses. Muni requires that an adequate supply of diesel fuel be on hand at all times. The Contractor shall schedule deliveries of diesel under a **“keep full”** plan that will maintain fuel tank levels at Muni delivery locations at between **three-quarters full and full**. This requirement will normally require deliveries seven days a week, and may require more than one delivery per day to a specific delivery point when actual usage exceeds the average.

With regards to biodiesel mixtures, Muni acknowledges that vendor may not always be able to source a sufficient supply of biodiesel to meet the “keep full” levels required above. In such a circumstance, the vendor shall satisfy the “keep full” requirement by delivering CARB #2 Ultra-Low Sulfur fuel meeting the specifications set forth in Section 69A.

All diesel fuel delivered to Muni shall be passed through a 60 mesh screen before entering Muni storage tanks. This may be done by inserting a 60 mesh screen in the delivery line of the truck-transport or by inserting a 60 mesh screen in the fill pipe of Muni storage tanks. The Contractor must provide and use the 60 mesh screen as described in this paragraph. All spills shall be the Contractor's responsibility, including all materials and equipment needed for the cleanup.

All biodiesel and biodiesel mixtures delivered to Muni shall be passed through a **three micron** filter.

Each delivery must be accompanied by a Loading Ticket (“rack tag”) or similar document showing the quantity of fuel. Delivery quantities are to be temperature-adjusted to 60° F.

Muni anticipates that it will pilot biodiesel mixture fuel sometime in 2006. This pilot may include both B20 and B99 (or B99.9). Muni is uncertain how many gallons of B20 or B99 biodiesel mixture per month it will need. After the pilot program, Muni expects to increase its biodiesel mixture consumption, but it is uncertain at this time when that would occur and how many gallons that would include.

The Fire Department is evaluating a pilot program to test the use of a B20 biodiesel mixture. Should the program be initiated, SFFD expects to require 1,000 gallons of B20 per month during the six-month program. Based on the results of the pilot study, SFFD may eventually require up to 12,000 gallons of B20 per month.

The City will provide the vendor with a 30-day written notice when it plans to start using biodiesel mixtures and whenever it plans to switch from one blend of biodiesel mixture to another.

5. Additional biodiesel provisions

a. Background

This is the first time the City has incorporated biodiesel into its fuel purchasing contract. The City has limited experience with biodiesel use. Biodiesel is a relatively new fuel with unique fuel properties. Accordingly, the biodiesel vendor will need to be prepared to address many

specific issues regarding biodiesel usage, including working with the City on the best means of implementing its biodiesel pilot programs, ensuring fuel quality and obtaining an adequate supply to meet the City's needs.

The City may have to apply for a variance or waiver from various state and/or federal agencies to be able to use biodiesel in its vehicles. Vendor shall agree to work with the City to obtain any such required variances or waivers.

The biodiesel portion of this contract proposal is a separate bid and the City reserves the right to award the biodiesel portion of the contract separately from the other fuels in this contract proposal. See Section 84 for more information.

b. Guidelines

All potential bidders are encouraged to review the "2004 Biodiesel Handling and Use Guidelines" prior to submitting bids. The guidelines can be found at

http://www.nrel.gov/vehiclesandfuels/npbf/feature_guidelines.html.

The vendor will be required to comply with and follow these guidelines and any updates thereto.

c. Additives

The City may desire to use certain additives in its biodiesel mixtures, including, but not limited to NOx additives, antioxidants, and biocides. Vendor agrees that it shall provide all such additives as requested by the City at vendor's cost (which shall include the cost of the additive and any additional cost associated with adding the additive with the fuel). Such additives shall be considered a "Biodiesel add-on rate" and the price shall be agreed to in writing by the City and the vendor in advance.

d. Future City production

The City is considering partnering with a biodiesel company to produce biodiesel in San Francisco. If the City does enter into any such arrangement, the City reserves the right to purchase biodiesel and biodiesel mixtures produced at such plant outside of this contract.

e. Samples and testing

Vendor agrees to provide the City with a copy of the producer's "Certificate for Biodiesel" (in accordance with IRS regulations) certifying that such biodiesel meets the standards of ASTM D 6751.

Vendor agrees to conduct industry standard testing of each batch of biodiesel the vendor receives to assure quality. The vendor agrees to share the results of each such test with the City agency purchasing the fuel. If the test results indicate that the biodiesel does not meet the specifications given herein, then the City shall have the right to refuse to accept the fuel. In addition, the City may, at any time, take a sample of fuel from the truck making the delivery, and have the sample tested by an independent testing laboratory to determine compliance with the specifications given herein. If the test analysis of the fuel sample shows that the biodiesel mixture does not comply with the specifications, the Contractor shall pay all costs of the test and the City shall have the right to refuse to accept the fuel.

Vendor further agrees to conduct periodic testing of the fuel in the City's holding tanks to ensure that no contamination has occurred in a tank and that the fuel has not experienced degradation over time.

f. Bids

The City encourages biodiesel vendors to bid for this contract. The City needs blended biodiesel mixtures delivered and does not want to do the blending itself. Accordingly, a pure biodiesel vendor would need to partner with a petroleum vendor to supply the blended biodiesel mixture. The City would look favorably on a bid by a biodiesel vendor who could supply the requested biodiesel mixtures, while ensuring that the final blended product was of the highest quality.

6. Muni delivery locations for diesel, biodiesel and biodiesel mixture

Deliveries of diesel fuel will be required as indicated on the Fuel Tank Inventory.

Estimated annual quantity for Muni diesel fuel required for this contract: **6.2 million gallons.**

Additional locations for diesel or biodiesel mixtures may be added at a later date.

Bidders are encouraged to visit the delivery sites prior to bidding.

If any controversy or disputes arise during the term of the contract, which might have been avoided by such a visit, that controversy shall be resolved in favor of the City.

Bidders wishing to visit Muni delivery sites prior to bidding must contact **Bart Murphy at (415) 401-3146** to make arrangements for visit.

7. Technical specifications for gasoline

- a. Shall meet all the requirements of ASTM D-439 for gasoline. Regular Unleaded Gasoline must have a minimum of 87 Octane content. Premium Unleaded Gasoline must have a minimum 92 Octane content.
- b. Contractor making deliveries to locations situated over Marine Waters (see locations listed in Special Condition 81) must comply with the applicable requirements of the California Department of Fish and Game.

Contractor must provide a 150-foot flexible hose to make deliveries to the two Fire boats docked at Pier 22 ½. Fire Department fuel tanks will be refueled when they are 75% full. Deliveries shall be made between 8 am – 8 pm, seven days per week.

8. omitted

9. Services of technical representative

The Contractor shall provide, at no additional cost to the City, the services of the refiner's or manufacturer's technical representative to assist in resolving problems associated with either (a) deliveries of fuel which does not meet the specifications given herein, or (b) service difficulties which appear to be related to the use of fuel.

The representative's local office shall be in or near San Francisco, so that response to the City's request for assistance can be made within the length of time commensurate with the seriousness of the problem.

If the bidder is not the refiner or manufacturer, the bid should be accompanied by the manufacturer's written certification that the services of its technical representative will be available on call; and that its product will meet the technical specifications given herein. "Typical" specifications are not acceptable.

If not enclosed with the bid, the bidder must provide such certification with ten working days of being notified to do so by Purchasing. If bidder fails to do so, Purchasing may declare that the bidder has abandoned its bid, and said bid shall be disqualified.

10. Shipping

Shipment to be made by tank truck (The words "tank truck" as used herein shall be understood to mean a tractor trailer unit with trailer-mounted metal tank suitably constructed to contain the fuels as described above).

Designated tank trucks will be mandated for only the purpose of biodiesel, diesel No. 2 and biodiesel mixtures (the tank truck that delivers biodiesel should be used for only biodiesel or diesel No. 2 and not gasoline or other products to assure quality control). The vendor shall provide the City with documentation certifying that the biodiesel mixture tank truck satisfies the requirements of this paragraph.

11. Deliveries

Contractor shall make deliveries as required by departments to the locations listed in this document, in the quantities and frequencies individually requested, so as not to interrupt City services and operations. The City has many delivery locations. Contractor must be able to deliver to all the locations listed in this document. Additional locations may be added during the term of the contract.

Any failure to deliver the fuels as requested will be subject to General Condition 17, Failure to Deliver. If Contractor fails to deliver gasoline or diesel in the manner, or within the time frame called for by this contract or, as requested by the department, the City may purchase the fuel from another source on the open market. If the City has to pay a higher price, the excess price will be charged to and collected from the Contractor or sureties on its bond if bond has been required. This paragraph shall not apply to biodiesel or biodiesel mixtures.

When deliveries of several products are combined to provide for a full-tank trailer-load to one location, the full-tank trailer price shall apply. The price for deliveries smaller than the quantities shown on the bid sheet will be determined by the Add-on prices shown in item 28 on the Bid Sheet.

12. omitted

13. omitted

14. omitted

15. Billing prices

To provide for automatic adjustments in the price of fuel delivered under this contract, the price shall be based on the average of the Pad 5 prices for San Francisco as shown in the latest issue of *Oil Price Information Service*, published by United Communications Group, plus the firm, fixed mark-up (plus) or mark-down (minus) which is bid by the successful bidder, plus the corresponding “Add-on Rate”, where applicable, for smaller deliveries.

For biodiesel and biodiesel mixtures, the automatic adjustments in the price shall be based on the average of the OPIS Fuel Ethanol & Biodiesel Report for San Francisco as shown in the latest issue of “OPIS Fuel Ethanol & Biodiesel Report,” plus the firm, fixed mark-up (plus) or mark-down (minus), plus the corresponding “Biodiesel Add-on Rate”, when applicable. Until such time as OPIS initiates coverage on San Francisco Biodiesel, the contract price shall be based on the average OPIS price for Los Angeles, Salem, Seattle, Phoenix, Tacoma, and Vancouver.

As stated above, the City intends to begin using a B20 biodiesel mixture. The City may also purchase biodiesel mixtures with a higher or lower percentage of biodiesel during the term of the contract. For biodiesel mixtures that have an OPIS price, the price of such biodiesel mixtures shall be as set forth in the contract (OPIS price plus mark-up or minus mark-down, plus the “Biodiesel Add-on Rate” when applicable). For biodiesel mixtures that do not have an OPIS price (i.e., B30 or B99), the price shall be agreed upon in writing by the City and the vendor prior to delivery.

The intent is to permit weekly price adjustments to coincide with OPIS current publishing schedule. Adjusted prices are to become effective on the latest OPIS publishing date (Monday) through the following Sunday.

When applicable, invoices for fuel delivered shall separately indicate amounts charged for California sales tax, the California Motor Vehicle Fuel License Tax for gasoline, and the California Use Fuel Tax for diesel fuel.

Notwithstanding General Condition No. 22, no other state taxes or fees shall be invoiced for fuel delivered. The City is exempt from federal excise taxes and fees, and no such amounts shall be included on any invoice. Fees chargeable under the Oil Spill Prevention and Response Act, Government Code §8670.1, and the Superfund Tax, 26 U.S.C. §4611, will not be considered applicable excise taxes.

16. Unavailability of OPIS

If the OPIS price basis identified above ceases to be published, or is materially changed, either party may request a new basis for contract price adjustments. If mutual agreement on a new price basis cannot be reached within a reasonable length of time, City shall not be obligated to buy and Contractor shall not be obligated to deliver fuel until such time as agreement is reached. If, after 30 days, parties cannot agree on a new price basis, this contract will terminate with no prejudice against either party for such failure to agree contract will terminate with no prejudice against either party for such failure to agree.

OPIS PAD 5 Average of CARB #2 ULSD meeting the specifications of Section 65.A for San Francisco (OPIS SF ULSD) multiplied times 80%, plus OPIS Fuel Ethanol and Biodiesel Report average of B100 for San Francisco multiplied times 20%, plus the bidders’ mark-up (plus) or Mark-down (minus), less any applicable cash payment discount and sales tax discount per Special Conditions 76.

Example: OPIS SF ULSD = \$X.XXX

OPIS SF B100 = \$Y.YY
Formula: $\$X.XXX \cdot .8 + \$Y.YY \cdot .2 = \text{B20 Base Price}$
Bid mark-up or mark-down off B20 Base Price

17. omitted

18. Awarded items

- a. If during the term of the contract, a contract item is determined to be unacceptable for a particular use, and such is documented by a department and as determined by Purchasing, then it is understood and agreed that the item will be cancelled and removed from the contract without penalty to the City. The City's sole obligation to the vendor is payment of deliveries made prior to the cancellation date. City shall give the vendor 10 days' notice prior to any cancellation. The City will purchase the required replacement item from any source and in the manner as determined by Purchasing.
- b. If a contracted item has been discontinued by the manufacturer or is deemed temporarily unavailable, it will be the responsibility of the Contractor to search the marketplace and find an acceptable equal substitute in the time required for delivery and at the contract price.

19. Ordering

- a. Items to be furnished under this contract shall be ordered by the issuance of a Purchase Order Release, by the City department during the effective period of the contract.
- b. All invoices for payments shall show the Purchase Order Number.

20. Payment

- a. Payments shall be made by the City to Contractor in arrears. The department has the discretion to pay for an order only after it is completed or for a partial delivery.
- b. Invoices must be in a form acceptable to the department and Controller. All amounts paid by the City to the Contractor shall be subject to the audit by the City.

21. Material Safety Data Sheet

- a. Successful Bidder must furnish completed Material Safety Data Sheet (MSDS) within ten days of notification to do so, for any products supplied on this contract that contains or is considered to be hazardous substance. Failure to furnish a completed MSDS for each item required may result in rejection of the bid.
- b. Contractor shall provide to the City, current updated MSDSs for required products under this agreement. MSDSs are subject to approval by the San Francisco Department of Public Health's Bureau of Environmental Health as to form and content.

22. Insurance

Prior to award, the successful bidder or bidders will be required to furnish evidence of insurance as follows:

- a. Contractor will maintain in force, during the full term of the contract, insurance in the following amounts and coverage:
 1. Workers' Compensation, with Employers' Liability limits not less than \$1,000,000. each accident.
 2. Commercial General Liability Insurance with limits not less than \$2,000,000. each occurrence Combined Single Limit Bodily Injury and Property Damage, including Contractual Liability, Independent Contractor, Broadform Property Damage, Personal Injury, Products and Completed Operations, Explosion and Collapse coverages.
 3. Commercial Business Automobile Liability Insurance with limits not less than \$2,000,000. each occurrence Combined Single Limit Bodily Injury and Property Damage, including Owned and Non-owned and hired vehicles coverages, as applicable.
- b. General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:
 1. Name as ADDITIONAL INSUREDS 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 contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- c. All policies shall provide thirty days advance written notice to City of cancellation, mailed to the following address:

Office of Contract Administration
City and County of San Francisco
City Hall, Room 430
One Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685
- d. Before commencement of the term of this contract, certificates of insurance and copies of additional insured policy endorsements, in form and with insurers acceptable to the City, evidencing all required insurance, shall be furnished to the City, with complete copies of policies upon request.
- e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this contract and without lapse, for a period of three years beyond the contract expiration, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the contract, such claims shall be covered by such claims-made policies.
- f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit and 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 limits specified above.

- g. Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of such lapse of insurance.
- h. Approval of the insurance by the City shall not relieve or decrease the liability of the Contractor hereunder.

24. Entire agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.

25. omitted

This document differs from what was in the bid package. The final paragraph 21, “

Terms Related to the Contract

The following provisions will apply to the contract awarded as a result of this bid.

1. Inspection

All articles supplied shall be subject to inspection and rejection by Purchasing or any department official responsible for inspection.

2. Contract Interpretation; Choice of Law/Venue; Assignment

Should any questions arise as to the meaning and intent of the contract, the matter shall be referred to Purchasing, who shall decide the true meaning and intent of the contract. This contract shall be deemed to be made in, and shall be construed in accordance with the laws of, the State of California; the venue for all claims arising out of this contract shall be in San Francisco. This contract may be assigned only with the written approval of Purchasing.

3. Hold Harmless and 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, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, resulting directly or indirectly from Contractor's performance of this Contract, 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 Contract, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

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

4. Failure to Deliver

If Contractor fails to deliver an article or service of the quality, in the manner or within the time called for by this contract, such article or service may be bought from any source by Purchasing and if a greater price than the contract price be paid, the excess price will be charged to and collected from Contractor or sureties on its bond if bond has been required.

5. Budget and Fiscal Provisions

This Contract is subject to the budget and fiscal provisions of 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 Contract 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 Contract 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 Contract 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 Contract.

6. Default; Remedies

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 Contract or to seek specific performance of all or any part of this Contract. 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 Contract or any other contract 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 Contract or any other contract.

All remedies provided for in this Contract 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.

7. Termination for Convenience

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.

In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City.

8. 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 City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City.
- c. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.
- d. 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.

9. Taxes

- a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Contract, or the services delivered pursuant hereto, shall be the obligation of Contractor.
- b. Contractor recognizes and understands that this Contract may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Contract 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, extensions, renewal, or assignment of this Contract may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest by this Contract. 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 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.

10. Use of City Opinion

Contractor shall not quote, paraphrase, or otherwise refer to or use any opinion of City, its officers or agents, regarding Contractor or Contractor's performance under this contract without prior written permission of Purchasing.

11. 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, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS 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 U.S., 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 Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code 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 the City or where work is being performed for the City, 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, and any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, or between the domestic partners and spouses of such employees, if the domestic partnership has been registered with a governmental entity pursuant to state or local law

authorizing such registration, subject to conditions set forth in San Francisco Administrative Code Sec. 12B.2(b).

d. Incorporation of Administrative Code Provisions by Reference.

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated 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 of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

12. Local business enterprise utilization; liquidated damages

a. The LBE Ordinance

Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor’s willful failure to comply with any applicable provision of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

Enforcement. If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor’s net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City’s Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the “Director of HRC”) may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor’s LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17

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

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

13. MacBride Principles – Northern Ireland

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.

14. Tropical Hardwood and Virgin Redwood Ban

The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of Contractor to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

15. Resource Conservation

Contractor agrees to comply fully with the provisions of Chapter 5 of the San Francisco Environment Code (“Resource Conservation”), as amended from time to time. Said provisions are incorporated herein by reference

16. Submitting False Claims; Monetary Penalties

Any contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall also be liable to the City for the costs, including attorney’s 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) 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. (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.

17. Liability of City

CITY'S PAYMENT OBLIGATIONS UNDER THIS CONTRACT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR UNDER THIS CONTRACT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, 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 CONTRACT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS CONTRACT.

18. 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 Contract.

19. Compliance with American 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 Contract 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 Contract 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 Contract.

20. 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 Contract, 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.

21. Condition of contractor's property

Contractor shall maintain its property, including its worksite in Richmond, in a continuously clean condition, and shall use best efforts to prevent spills of hazardous materials, either by the contractor itself or by others.