

## ARTICLE 8

### REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants each of the following as of the date of this Agreement and at all times throughout the term of this Agreement:

8.1 **Valid Existence; Licenses and Permits.** Contractor is a duly formed legal entity, validly existing and in good standing under the laws of the jurisdiction of its formation. Contractor is qualified to do business in the State of California and has obtained all necessary licenses, permits, approvals and authorizations necessary or proper in order to perform Contractor's obligations hereunder.

8.2 **Authorization; Enforceability.** Contractor has duly authorized by all necessary action the execution, delivery and performance of this Agreement. Contractor has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with the terms hereof.

8.3 **No Misstatements.** No document furnished or to be furnished by Contractor to City in connection with this Agreement or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

8.4 **No Conflict of Interest.** Contractor is familiar with the provisions of Section 15.103 and Appendix C 8.105 of City's Charter, and Section 87100 *et seq.* of the California Government Code, and knows of no facts which constitute a violation of such provisions.

8.5 **Vendor Warranties.** If Contractor is not a manufacturer, dealer or vendor of the Equipment, then Contractor hereby assigns to City during the term of this Agreement, and irrevocably appoints City its agent and attorney-in-fact during the term of this Agreement to assert from time to time, whatever claims and rights, including warranties of the Equipment, which Contractor may have against the manufacturer, dealer or vendor of the Equipment. .

8.6 **Warranty – Merchantability and Fitness.** Contractor warrants that all equipment furnished to the City under this Agreement are merchantable and fit for the particular purpose for which Contractor knows, or has reason to know City sought to procure them.  
Contractor

## ARTICLE 9

### INDEMNIFICATION AND GENERAL LIABILITY

9.1 **Indemnification.** Contractor shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses arising from, in connection

with or caused by: (a) a material breach of this Agreement by Contractor; (b) a material breach of any representation or warranty of Contractor contained in this Agreement; (c) any personal injury caused, directly or indirectly, by any act or omission of Contractor or its employees, subcontractors or agents; (d) any property damage caused, directly or indirectly by any act or omission of Contractor or its employees, subcontractors or agents; (e) the use, misuse or failure of any equipment (other than the Equipment) or facility used by Contractor, or by any of its employees, subcontractors or agents, regardless of whether such equipment or facility is furnished, rented or loaned to Contractor by an Indemnified Party; (f) any tax, fee, assessment or other charge for which Contractor is responsible under Article 7; or (g) any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark of any Person in consequence of the use by any Indemnified Party of any goods or services furnished to such Indemnified Party in connection with this Agreement. Notwithstanding the foregoing, Contractor shall have no obligation under the immediately preceding sentence with respect to any Loss that is caused solely by the active negligence or willful misconduct of the Indemnified Party and is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Contractor or its employees, subcontractors or agents.

9.2 **Duty to Defend; Notice of Loss.** Contractor acknowledges and agrees that its obligation to defend the Indemnified Parties under Section 9.1: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of Section 9.1, regardless of whether the allegations asserted in connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to Contractor by the Indemnified Party and continues at all times thereafter. The Indemnified Party shall give Contractor prompt notice of any Loss under Section 9.1 and Contractor shall have the right to defend, settle and compromise any such Loss; provided, however, that the Indemnified Party shall have the right to retain its own counsel at the expense of Contractor if representation of such Indemnified Party by the counsel retained by Contractor would be inappropriate due to conflicts of interest between such Indemnified Party and Contractor. An Indemnified Party's failure to notify Contractor promptly of any Loss shall not relieve Contractor of any liability to such Indemnified Party pursuant to Section 9.1, unless such failure materially impairs Contractor's ability to defend such Loss. Contractor shall seek the Indemnified Party's prior written consent to settle or compromise any Loss if Contractor contends that such Indemnified Party shares in liability with respect thereto.

9.3 **LIMITATION ON LIABILITY OF CITY.** CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENTS REQUIRED UNDER ARTICLE 4. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO 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 LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY SERVICES OR GOODS FURNISHED IN CONNECTION WITH THIS AGREEMENT.

9.4 **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.

9.5 **Indemnification.** 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.

## ARTICLE 10

### INSURANCE

10.1 **Types and Amounts of Coverage.** Without limiting Contractor's liability pursuant to Article 9, Contractor shall maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

a. Property insurance on an all-risk form (excluding earthquake coverage) in an amount equal to the amount specified in the *Supplemental Basic Information*, which is one hundred percent (100%) of the replacement value of the Equipment. Such amount shall be adjusted annually upon renewal of the policy to ensure consistent full replacement value. Any deductible under such policy shall not exceed five thousand dollars (\$5,000), each loss.

b. Commercial General Liability Insurance with limits not less than the amount of one million dollars (\$1,000,000), each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

c. Workers' Compensation, with Employers' Liability Limits not less than \$1,000,000 each accident; and

d. 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.

10.2 **Additional Requirements.** Such policies shall:

a. Name as additional insured City and its officers, agents and employees.

b. Provide 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. Provide at least thirty (30) days' advance written notice to City of cancellation or modification mailed to City's address for notices pursuant to Article 16.

10.3 **Required Post-Expiration Coverage.** Should any of the insurance required hereunder 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 (3) years beyond the expiration or termination of this Agreement, to the effect that, should occurrences during the term hereof give rise to claims made after expiration or termination of the Agreement, such claims shall be covered by such claims-made policies.

10.4 **General Annual Aggregate Limit/Inclusion of Legal or Defense Costs.** Should any of the insurance required hereunder 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.

10.5 **Evidence of Insurance.** Before commencing any operations under this Agreement, Contractor shall 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's request.

10.6 **Effect of Approval.** Approval of any insurance by City shall not relieve or decrease the liability of Contractor hereunder.

10.7 **Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, Contractor and City each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Equipment, or any portion thereof, for any loss or damage maintained by such other party, whether or not such loss is caused by the fault or negligence of the other party. If any policy of insurance relating to the Equipment does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Contractor shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

## ARTICLE 11

### DAMAGE, DESTRUCTION AND CONDEMNATION

11.1 **Liability for Damage to Equipment.** It is understood and agreed that the City is responsible for loss of or damage to any Contractor-owned equipment involved, only as caused by the negligent or wrongful actions of City's officers, agents and employees.

11.2 **Condemnation.** If all the Equipment or so much thereof as to render the remainder unusable for the purposes for which it was used or intended to be used by City shall be

taken under the power of eminent domain, this Agreement shall cease as of the day on which possession is taken. City shall take or cause to be taken such action as is reasonably necessary to obtain compensation at least equal to the value of the Equipment or portion thereof taken by eminent domain and all condemnation proceeds shall be transferred by City to Contractor. If less than all the Equipment shall be taken under the power of eminent domain and the remainder is usable for the purposes for which it was used by City at the time of such taking, then this Agreement shall continue in full force and effect as to such remainder, and the parties waive the benefits of any law to the contrary, and in such event there shall be a partial abatement of the Payments due under this Agreement in an amount equal to the proportion which the fair market sales value (as of the applicable Commencement Date) of that portion of the Equipment taken under the power of eminent domain bears to the fair market sales value (as of the applicable Commencement Date) of the Equipment taken.

## ARTICLE 12

### EVENTS OF DEFAULT BY CITY; REMEDIES

12.1 **Events of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default" by City under this Agreement:

a. **Failure to Pay.** City fails to make any Payment when due and payable, and such failure continues for more than fifteen (15) Business Days after notice and opportunity to cure thereof from Contractor; provided, however, that no Event of Default shall occur if such failure to pay was due to City's failing to appropriate sufficient funds to make the required Payment.

b. **Failure to Pay Other Charges.** City fails to make any other payment required under this Agreement when due and payable, and such failure continues for more than forty-five (45) days after notice and opportunity to cure thereof from Contractor; provided, however, that no Event of Default shall occur if such failure to pay was due to City failing to appropriate sufficient funds to make the required payment.

c. **Nonmonetary Breach.** City fails to keep, observe or perform any material term, covenant or condition (other than as specifically enumerated in Subsections 12.1(a) and 12.1(b)) contained in this Agreement to be kept or performed by City and such failure shall have continued for more than sixty (60) days after City receives written notice thereof from Contractor.

d. **Voluntary Insolvency.** City (i) is generally not paying its debts as they become due, (ii) 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, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of City or of any substantial part of City's property or (v) takes action for the purpose of any of the foregoing.

e. **Involuntary Insolvency.** Without consent by City, a court or government authority enters an order, and such order is not vacated within sixty (60) days, (i) 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, (ii) 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 (iii) ordering the dissolution, winding-up or liquidation of City.

12.2 **Remedies Upon Event of Default.** Upon and during the continuance of an Event of Default by City, Contractor may do any of the following, individually or in combination with any other remedy:

a. Contractor may take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of City under this Agreement.

b. Contractor may retake possession of the Equipment with respect to which there is an Event of Default by City, and sell or lease such Equipment, holding City liable for all Payments on such Equipment up to the effective date of repossession.

12.3 **Remedies Nonexclusive.** Each of the remedies provided for in this Article 12 may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations, including the right to bring suit for damages. The remedies contained herein are in addition to all other remedies available to Contractor at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

## ARTICLE 13

### EVENTS OF DEFAULT BY CONTRACTOR; REMEDIES

13.1 **Events of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default" by Contractor under this Agreement:

a. **False Statement.** Any statement, representation or warranty contained in this Agreement or in any other document submitted to City under this Agreement is found by City to be false or misleading.

b. **Failure to Perform Other Covenants; Breach of Warranty.** Contractor fails to perform or breaches any warranty, agreement, provision or covenant of this Agreement to be performed or observed by Contractor as and when performance or observance is due and such

failure or breach continues for a period of fifteen (15) calendar days after the date on which such performance or observance is due.

c. **Voluntary Insolvency.** Contractor (i) is generally not paying its debts as they become due, (ii) 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, (iii) makes an assignment for the benefit of its creditors, (iv) 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 (v) takes action for the purpose of any of the foregoing.

d. **Involuntary Insolvency.** Without consent by Contractor, a court or government authority enters an order, and such order is not vacated within fifteen (15) days, (i) 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, (ii) 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 (iii) ordering the dissolution, winding-up or liquidation of Contractor.

13.2 **Remedies Upon Event of Default.** Upon and during the continuance of an Event of Default by Contractor hereto, the City may do any of the following, individually or in combination with any other remedy:

a. **Termination.** City may terminate this Agreement. Such termination shall not waive any rights or remedies of City hereunder.

b. **Legal Action.** Whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of City under this Agreement.

c. **Right to Cure.** The City shall have the right (but no obligation) to cure any Event of Default by the Contractor. All amounts expended by the City in effecting such cure shall be deemed Losses hereunder and shall accrue interest from the date of incidence at the maximum rate permitted by law.

13.3 **Remedies Nonexclusive.** Each of the remedies provided for in this Article 13 may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations, including the right to bring suit for damages. The remedies contained herein are in addition to all other remedies available to City at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

## ARTICLE 14

### DISCLOSURE OF INFORMATION AND DOCUMENTS

14.1 **Proprietary or Confidential Information of City.** Contractor understands and acknowledges that, in the performance of this Agreement or in contemplation thereof, Contractor may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential information, 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 the performance of this 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.

14.2 **Sunshine Ordinance.** Contractor acknowledges and agrees that this Agreement is subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, Contractor's bids, responses to Requests for Proposals (RFPs) and all other records of communications between City and persons or entities seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in such Section 67.24(e) (as it exists on the date hereof) 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. All information provided by Contractor which is covered by such Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request.

## ARTICLE 15

### ASSIGNMENTS

15.1 **No Assignment.** Neither Contractor nor City shall, either directly or indirectly, assign, transfer, hypothecate, sublet or delegate all nor any portion of this Agreement or any of its rights, duties or obligations hereunder without the prior written consent of the other party, which shall not be unreasonably withheld. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of Contractor involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an assignment for purposes of this Agreement.

15.2 **No Public or Private Offerings.** Without limiting the scope of Section 15.1, Contractor shall not effect a private or public offering of certificates of participation, municipal securities or other debt instruments representing fractionalized interest in this Agreement without first obtaining the written consent of City, as such consent shall be approved as to form by City Attorney. City shall have the right to require Contractor to satisfy any conditions City imposes before it consents to any offering of any such certificates, securities or instruments, including approval by City's Board of Supervisors.



15.3 **Agreement Made in Violation of this Article.** Any agreement made in violation of Section 15.1 or 15.2 shall confer no rights on any Person and shall automatically be null and void.

15.4 **Assignor Retains Responsibility.** No assignment or transfer pursuant to this Article 15 shall relieve the assigning party of liability for the performance by any assignee or transferee of all of the covenants, terms and conditions contained in this Agreement.

## ARTICLE 16

### NOTICES AND OTHER COMMUNICATIONS

16.1 **Requirements.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications which may affect either party's performance hereunder shall be in writing, shall be addressed to the person and address set forth in the ***Basic Information*** and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (if a facsimile number is provided in the ***Basic Information***). Any other non-essential communications may be by telephone or email.

16.2 **Notice to Controller.** Whenever Contractor delivers to City any notice, certificate or other communication relating to an Event of Default by City or an event which (after notice or any grace period) may become an Event of Default, Contractor shall also concurrently provide a copy of such notice to the Office of the Controller at 1 Dr. Carlton B. Goodlett Place Rm. 316, San Francisco, CA 94102 - 4685 by the same means as that used for sending the original notice.

16.3 **Effective Date.** All communications that must be in writing pursuant to Section 16.1 shall become effective on the date of receipt. Such date of receipt shall be determined by: (a) if mailed, the return receipt, completed by the U.S. Postal Service; (b) if sent via hand delivery, a receipt executed by a duly authorized agent of the party to whom the notice was sent; or (c) if sent via facsimile, the date of telephonic confirmation of receipt by a duly authorized agent of the party to whom the notice was sent or, if such confirmation is not reasonably practicable, the date indicated in the facsimile machine transmission report of the party giving such notice.

16.4 **Change of Address.** From time to time any party hereto may designate a new address for purposes of this Article 16 by notice to the other party.

## ARTICLE 17

### COMPLIANCE

#### 17.1 Disadvantaged Business Enterprise Utilization; Liquidated Damages

##### a. The DBE Ordinance

Contractor, shall comply with all the requirements of the Disadvantaged Business Enterprise Ordinance set forth in Chapter 14A of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "DBE 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 DBE 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 DBE 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 DBE 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

###### (1) Enforcement

If Contractor willfully fails to comply with any of the provisions of the DBE Ordinance, the rules and regulations implementing the DBE Ordinance, or the provisions of this Agreement pertaining to DBE 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 DBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the DBE 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 DBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14A.13(B).

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 DBE 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.

(2) Subcontracting Goals

The DBE subcontracting participation goal for this contract is 8%. 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 7 and Form 9. Failure to provide HRC Form 7 and Form 9 with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until HRC Form 7 and Form 9 is provided by Contractor.

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

(3) Subcontract Language Requirements

Contractor shall incorporate the DBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors.

Contractor shall include in all subcontracts with DBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any DBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the DBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and Purchasing to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. 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 the DBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(4) 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, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount.

Contractor further agrees, within ten working days following receipt of payment from the City, to file an affidavit (HRC Form 9) 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 §14A.13.

## 17.2 **Nondiscrimination; Penalties**

a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such Contractor or subcontractor, applicant for employment with such Contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, 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), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

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 (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 or where work is being performed for the City or elsewhere within 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 Section 12B.2(b) of the San Francisco 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 San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such 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.

17.3 **MacBride Principles--Northern Ireland.** Pursuant to San Francisco Administrative Code Section 12.F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

17.4 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Administrative Code Section 12I.5(b), City urges all 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.

17.5 **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 and its employees, agents or assigns shall comply with all terms and provisions of such Act and the rules and regulations promulgated thereunder.

17.6 **Resource Conservation; Liquidated Damages.** Chapter 21A of the San Francisco 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. If Contractor fails to comply in good faith with any of the provisions of Chapter 21A, Contractor shall 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.

17.7 **First Source Hiring** Chapter 83, Sections 83.1 – 83.18 of the San Francisco Municipal Code (Administrative Code) establishes requirements for First Source Hiring that are applicable to this Agreement. Within sixty (60) calendar days from the execution of this Agreement, Contractor shall submit to the City an approved First Source Hiring Agreement (FSHA) which details entry-level job positions, job retention goals, job training, recruitment and referral programs, record keeping and monitoring and good faith efforts requirements in compliance with the City's First Source Hiring Ordinance. Chapter 83 of the City Municipal Code and the City-approved FSHA is hereby incorporated into this Agreement.

17.8 **Compliance with Other Laws.** Without limiting the scope of any of the preceding sections of this Article 17, Contractor shall keep itself fully informed of City's Charter, codes, ordinances and regulations and all state, and federal laws, rules and regulations

affecting the performance of this Agreement and shall at all times comply with such Charter codes, ordinances, and regulations rules and laws.

#### **17.9 EIC Forms**

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (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 this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after 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 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 this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

#### **17.10 Limitations on Contributions**

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations of the contract until the later of either (1) the termination of negotiations for such contract or (2) three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

#### **17.11 Prohibition on Political Activity with City Funds**

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this contract. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this contract, and (ii) prohibit

Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

**17.12 Conflict of Interest**

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

**17.13 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.

**17.14 Nondisclosure of Private Information**

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

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

- (1) The disclosure is authorized by this Agreement;
- (2) The Contractor received advance written approval from the Contracting Department to disclose the information; or
- (3) The disclosure is required by law or judicial order.

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

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

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

#### **17.15 Graffiti Removal**

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute a material breach of this Agreement.



## ARTICLE 18

### MISCELLANEOUS

18.1 **No Waiver.** No waiver by either party of any default or breach of this Agreement by the other party shall be implied from any failure to take action on account of such default if such default persists or is repeated. No express waiver by either party shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

18.2 **Administrative Remedy for Agreement Interpretation.** Should any question arise as to the meaning or intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the City's Director of Purchasing, who shall decide the true meaning and intent of the Agreement. Such decision shall be final and conclusive.

18.3 **Governing Law; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

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

18.5 **Entire Agreement.** This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions, other than any express warranty and services and performance measures contained in any written materials (including any bid or proposal documents) delivered to City in connection herewith. Pricing under this Agreement is that set forth in the Equipment and Pricing Schedule in Contractor's Response to Proposal 96101 and that Equipment and Pricing Schedule in hereby incorporated into this Agreement.

18.6 **Certified Resolution re Signatory Authority.** Upon request of City, Contractor shall deliver to City a copy of the corporate resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the secretary or assistant secretary of Contractor.

18.7 **Time.** Time is of the essence in this Agreement.

18.8 **Further Assurances.** From and after the date of this Agreement, Contractor agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions

contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

18.9 **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.

18.10 **Successors; No Third-Party Beneficiaries**. Subject to the terms of Article 15, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the parties hereto and their respective successors and assigns and, in the case of Article 9, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

18.11 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute but one and the same instrument.

18.12 **Waiver of Personal Liability**. No member of City's Board of Supervisors nor any elected official, officer, agent or employee of City shall be individually or personally liable for the Payments or any other payments coming due hereunder or be subject to any personal liability or accountability by reason of this Agreement.

18.13 **Survival of Terms**. The obligations of Contractor and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement: Sections 6.1, 6.3, Article 9, Section 10.3, Article 14, Article 15, Article 16 and this Article 18.

18.14 **Modification**. 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date specified in the **Basic Information**.

**CITY**

**Recommended:**

Bill Jones

By: Bill Jones

Title Asst. Director Purchasing

**CONTRACTOR**

I have read and understood paragraph 17.3, 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.

Joseph Payne  
Authorized Signature

**Approved as to Form:**

Dennis J. Herrera,  
City Attorney

By: V. Clayton  
Deputy City Attorney

JOSEPH PAYNE  
Printed Name

BRANCH GENERAL SALES MANAGER  
Title SF

Ricoh Business Systems  
Company Name

**Approved:**

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

2000 Sierra Point Parkway, 7<sup>th</sup> Floor  
Address

Brisbane, CA 94005  
City, State, Zip

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Federal Employer ID Number