

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



Contract Modification 4

Janitorial and Window Washing for the Port of San Francisco

First Building Maintenance Company
 Marcus Clark, Vice President
 220 Montgomery Street, Suite 415
 San Francisco, CA 94104
 E-mail: info@1stmaint.com

Date: September 15, 2010
 Buyer Name: Pamela Olivier
 Term contract: 83637
 City Blanket No.: BPSF00003225
 Type: Indefinite quantity
 Not-to-exceed amount: \$ 1,500,000

The history of this contract and its modifications is as follows:

Modification	Start date	End date	Amount	Other changes
Original contract	05-01-06	04-30-09	\$1, 500,000	Add: Food Svc. Waste Reduction Requirements
1	no change	no change		Add items: Item No. 7 Fisherman's Wharf Port Harbor Office
2	05-01-09	06-30-09		Extend the contract
3	07-01-09	04-30-10		Extend the contract
4	05-01-10	04-30-11		Extend the contract Add Items 5% Price Reduction-Revised Award Sheet 1, 2, 3,& 7 Revised various contract conds

This modification 4 changes the contract as follows:

It extends the contract from May 1, 2010 through April 30, 2011. Add items 8 and 9. (See Attachment "A") The following items received a 5% price decrease. (See Attachment "A") In addition, various conditions have been revised and replaced in the contract. (See Attachment "B")

All other terms and conditions remain the same.

Approved by the City:

R.O.

 Naomi Kelly, Director of OCA and Purchaser

9/17/2010

 Date

Approved by Contractor:

Marcus W. Clark

 Signature

9/20/2010

 Date

Name and title

Vice President

Revised Award Sheet

Item No.	Description	Old Base Price per Unit	5% Price Reduction	New Base Price per Unit
1.	Area I Agriculture Building	\$ <u>2,420.00</u>	\$ <u>121.00</u>	\$ <u>2,299.00</u>
2.	Area II Roundhouse Plaza Roundhouse One Roundhouse Two Sandhouse	\$ <u>1,936.00</u>	\$ <u>96.80</u>	\$ <u>1,839.20</u>
3.	Area III Northern Waterfront Pier Sheds and Bulkhead Offices Pier One Pier 27 Shed Pier 27 Admin. Building / Pier 27 Annex Pier 29 Pier 33 Pier 33½ Pier 35 Bulkhead	\$ <u>5,590.00</u>	\$ <u>279.50</u>	\$ <u>5,310.50</u>
7.	Area VII Fisherman's Wharf Port Harbor Office	\$ <u>1,064.00</u>	\$ <u>53.20</u>	\$ <u>1,010.80</u>
8	Pier 19	\$ <u>900.00</u>	\$ <u>45.00</u>	\$ <u>855.00</u>
9.	Pier 23	\$ <u>600.00</u>	\$ <u>30.00</u>	\$ <u>570.00</u>

Note: First Building Maintenance will not charge an additional fee for move out/clean-up requests, carpet cleaning floor waxing or emergency cleanup.

Bid and Contract Conditions No. 22. Submitting False Claims; Monetary Penalties has been revised and replaced with the following:

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim

General Condition No. 51, First Source Hiring Program has been revised and replaced with the following:

- a. Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.
- b. First Source Hiring Agreement.** As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

 - (1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate

modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

- (2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.
- (3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.
- (4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.
- (5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department.

Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

- (6) Set the term of the requirements.
 - (7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.
 - (8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.
 - (9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.
- c. Hiring Decisions.** Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.
- d. Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.
- e. Liquidated Damages.** Contractor agrees:
- (1) To be liable to the City for liquidated damages as provided in this section;
 - (2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
 - (3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly

withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other

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

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

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

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

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

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

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated

damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

- f. **Subcontracts.** Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

General Conditions No. 52 Minimum Compensation Ordinance (“MCO”) has been revised and replaced with the following:

- a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.
- b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.
- c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.
- d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.
- e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

- f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.
- g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.
- h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.
- i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

Special Condition No. 86. Insurance has been revised and replaced with the following:

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

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

- (1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
 - (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence, \$2,000,000 aggregate for bodily injury, property damage, contractual liability, personal injury, products and completed operations.
 - (3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:
- (1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
 - (2) That such policies are primary insurance to any other insurance available to the Additional Insured, 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. Contractor hereby agrees to waive Workers' Compensation subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.
- d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to:

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

- 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 Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
- f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.
- i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.
- j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insured.

City and County of San Francisco
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 San Francisco, CA 94102-4685



Contract Modification 3

Janitorial and Window Washing for the Port of San Francisco

First Building Maintenance Company
 Booker T. Clark
 220 Montgomery Street, Suite 409
 San Francisco, CA 94104
 E-mail: info@1stmaint.com

Date: 07-22-09
 Buyer Name: Darlene Frohm
 Term contract: 83637
 Type: Indefinite quantity
 Not-to-exceed amount: \$ 1, 500,000

The history of this contract and its modifications is as follows:

Modification	Start date	End date	Amount	Other changes
Original contract	05-01-06	04-30-09	\$1, 500,000	
1	n/c	n/c		add services
2	05-01-09	06-30-09		Two- month extension
3	07-01-09	04-30-10		

This modification 3 changes the contract as follows:

It extends the contract from July 1, 2009 To April, 30, 2010.

All other terms and conditions remain the same.

Approved by the City:

-Gy

Naomi Kelly
 Naomi Kelly, Director of OCA and Purchaser

7-24-09
 Date

Approved by Contractor:

Booker T. Clark
 Signature

7-24-09
 Date

Name and title

Booker T. Clark Owner / President

Jun. 5. 2009 12:26PM

No. 4820 P. 2

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



Contract Modification 2

Janitorial and Window Washing for the Port of San Francisco

First Building Maintenance Company
Booker T. Clark
220 Montgomery Street, Suite 409
San Francisco, CA 94104
E-mail: info@1stmaint.com

Date: 05-27-09
Buyer Name: Darlene Frohm
Term contract: 83637
Type: Indefinite quantity
Not-to-exceed amount: \$ 1,500,000

The history of this contract and its modifications is as follows:

Modification	Start date	End date	Amount	Other changes
Original contract	05-01-06	04-30-09	\$1,500,000	
1	n/c	n/c		add services
2	05-01-09	06-30-2009		

This modification 2 changes the contract as follows:

It extends the contract from May 1, 2009 To June 30, 2009.


All other terms and conditions remain the same.

Approved by the City:


Naomi Kelly, Director of OCA and Purchaser

6-5-09
Date

Approved by Contractor:


Signature

6-5-09
Date

Name and title

Booker T. Clark

Sign and return one original. The duplicate original is for your files.

P-280 (2-09-09)

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



REVISED CONTRACT MODIFICATION NO. 1

Indefinite Quantity

First Building Maintenance Company
220 Montgomery St. #409
San Francisco, CA 94104
Attn: Booker T. Clark

June 20, 2006

Contract Proposal No. **83637**

Estimated Amount Indefinite

The City and County of San Francisco does hereby accept your offer to modify the contract and furnish the Services indicated below. Such Services are to be delivered in the manner and the form and at the times and prices set forth in the above numbered Contract Proposal, but only after receipt of order properly certified by the Controller of the City and County of San Francisco.

ADD ITEMS

For furnishing and delivering **Janitorial and Window Washing For the Port Of San Francisco.**

In accordance with Special, Condition No. 93 – Additional New Items have been added to Contract No. **83637.**

Revised Title of Item No. 7 follows: **FISHERMAN'S WHARF PORT HARBOR OFFICE**

1. Clean restroom fixtures and chrome fittings.
2. Clean and sanitize toilet bowls, toilet seats, and urinals.
3. Clean and refill restroom dispensers and clean mirrors.
4. Sweep and damp mop all restroom floors with germicide solution.

\$750.00 per month

All other prices, terms, and conditions remain the same.

Acknowledge receipt and acceptance of this Contract Modification in the space below. Return to Purchaser, 1 Dr. Carlton B. Goodlett Place, Room 430, San Francisco, CA, 94102-4685. **DUPLICATE COPY IS FOR YOUR FILES**

M.C.
As the duly appointed Purchaser
of the City and County of San Francisco

Michael D. Wood
Michael D. Wood

Date **6/23/06**

RECEIPT OF THE ABOVE IS HEREBY ACKNOWLEDGED:

Contractor First Building Maintenance Co.

By Marion W. Clark V.P.
Signature Title

Date 6/23/06