

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

**Third Amendment**

THIS AMENDMENT (this "Amendment") is made as of **June 20, 2011**, in San Francisco, California, by and between **Agurto Corporation DBA Pestec Exterminator**, 1555 Yosemite Avenue, San Francisco, CA 94124 ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to **increase the compensation amount and update standard contractual languages**.

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number 4015-06/07 on June 20, 2011

NOW, THEREFORE, Contractor and the City agree as follows:

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

**1a. Agreement.** The term "Agreement" shall mean the Agreement dated **February 1, 2008** between Contractor and City, as amended by the **First Amendment**, dated **January 5, 2010**, and the **Second Amendment**, dated **March 15, 2010**.

**1b. Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

**2. Modifications to the Agreement.** The Agreement is hereby modified as follows:

**2a. Section 5 Compensation of the Agreement of the Agreement** currently reads as follows:

Compensation shall be made in monthly payments on or before the **last day** of each month for work, as set forth in Section 4 of this Agreement, that the **Director, Office of Contract Administration - Purchasing**, in his or her sole discretion, concludes has been performed as of the **last day** of the immediately preceding month. In no event shall the amount of this Agreement exceed **seven and one half million dollars (\$7,500,000)**. The breakdown of costs

associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

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

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

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

Compensation shall be made in monthly payments on or before the **last day** of each month for work, as set forth in Section 4 of this Agreement, that the **Director, Office of Contract Administration - Purchasing**, in his or her sole discretion, concludes has been performed as of the **last day** of the immediately preceding month. In no event shall the amount of this Agreement exceed **eight and one half million dollars (\$8,500,000)**. The breakdown of costs associated with this Agreement appears in Appendix B-2, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

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

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

**2b. Submitting False Claims; Monetary Penalties** Section 8 is hereby replaced in its entirety to read as follows:

**8. Submitting False Claim; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for 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.

**2c. Requiring Minimum Compensation for Covered Employees.** Section 43 is hereby replaced in its entirety to read as follows:

**43. Requiring Minimum Compensation for Covered Employees**

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](http://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.

**2d. Requiring Health Benefits for Covered Employees.** Section 44 is hereby replaced in its entirety to read as follows:

**44. Requiring Health Benefits for Covered Employees.**

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such



period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

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

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

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

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with

City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

**2e. Cooperative Drafting.** Section 59 is hereby added to the Agreement, as follows:

**59. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**2f. Appendix B-2.** Appendix B-1 is hereby replaced in its entirety by Appendix B-2, attached hereto and incorporated by reference as though fully set forth herein.

**2g. Appendix C.** Appenix C, Invoice Form to be used by Contractor for all billing beginning on the Effective Date of this Third Amendment, is attached hereto and incorporated by reference as though fully set forth herein.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after **June 20, 2011.**

**4. Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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

**CITY**

**CONTRACTOR**

Recommended by:

**Agurto Corporation DBA  
Pestec Exterminator**

  
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**Office of Contract Administration**

  
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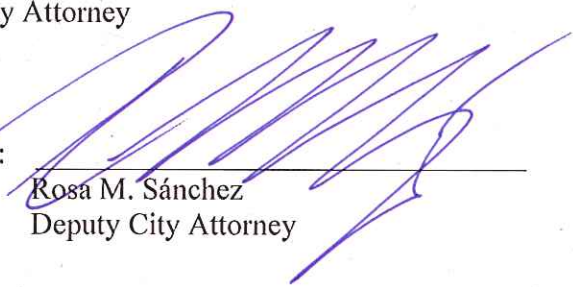
**Luis Agurto Jr.  
President/COO**

Approved as to Form:

City vendor number: **69455**


Dennis J. Herrera  
City Attorney

By:

  
\_\_\_\_\_

Rosa M. Sánchez  
Deputy City Attorney

Approved:

  
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*N.* Naomi Kelly  
Director of the Office of Contract  
Administration, and Purchaser



Appendix A: Invoice Format  
 Term Contract 83518  
 Contract Modification: Third Amendment  
 Contract Modification Effective Date: 01/07/11

Invoice #:	Department Name:
Vendor Name:	Department 3 Digit Code:
Vendor Contact Name and Phone Number:	Department Contact Name and Phone Number:
Vendor Street Address:	Department Billing Street Address:
Vendor City, State, Zip Code:	Department Billing City, State, Zip Code:

\*\* If more than one service is provided on the same day, the vendor must detail each service type provided on a separate line in the invoice.

Service Date	Service Location (Dept. Name and Address of Site where services were performed)	Time In	Time Out	Total Hours Worked	Service Provided (i.e. short term, ongoing, emergency or training)	Hourly Rate for Service Provided	Total Charge for Service Provided (total hours worked x Hourly Rate for Service Provided)
						\$	\$
						\$	\$
						\$	\$
						\$	\$
						\$	\$
Subtotal: \$							\$

Tax: \$ \_\_\_\_\_  
 Total: \$ \_\_\_\_\_

Department Signature (verifying that invoice is correct and accurate): \_\_\_\_\_ Date: \_\_\_\_\_



**Appendix B-2  
Calculation of Charges**

Under no circumstances shall the total amount billed or paid under this Agreement exceed the amount set forth in Section 5 Compensation. No charges or payments for travel, meals, coping, telephones or other administrative costs shall be made. Each monthly invoice will reflect a 5% (five percent) discount for payments made in full within 30 days of receipt and authorization of an invoice on the form approved by the city.

A.	Emergency services per man hour	\$82.00
B.	Short Term Services per man hour	\$82.00
C.	Ongoing Services per man hour	\$82.00
D.	Training and Consultation services per man hour	\$ 1.00

User departments may, in their discretion, negotiate a flat monthly rate for all services based on the amount set forth above for Ongoing Services. Items A thru D are fixed contract prices based on bid and award. The only variable is the number of hours for repairs, which must be approved by departments in advance.

All costs for materials and supplies shall be billed at contractor's cost plus a percentage to be negotiated by each participating department but in no event to exceed 30%.

The user department may opt to allow the Contractor to make minor IPM structural repairs at the ongoing service hourly rate at a cost not to exceed \$500 per incident.