

taxation and Contractor, and any subcontractor, successor or assign, may be subject to the payment of such taxes.

b. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

c. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

d. Contractor shall provide such other information as may be requested by City to enable City to comply with any reporting requirements under applicable law with respect to possessory interests.

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 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, knows of no facts which constitute a violation of said provisions, and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

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.

ARTICLE 9

INDEMNIFICATION AND GENERAL LIABILITY

9.1 **Indemnification.** Contractor shall indemnify, protect, defend and hold harmless the City and its officers, agents and employees (hereinafter referred to in this Section 9 as "City") 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 by any act or omission of Contractor or its employees, subcontractors or agents; (d) any property damage caused, directly 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 the City; (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 the City of any goods or services furnished to the City 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 by the active negligence or willful misconduct of the City 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. In addition, Contractor shall have no obligation to indemnify City for intellectual property infringement as described in subsection (g) above to the extent the claim of infringement is attributable to City's improper modification of software provided by Contractor (or imbedded in Contractor's goods) or City's unauthorized combination of Contractor's software with software other than software provided by Contractor..

9.2 **Duty to Defend; Notice of Loss.** Contractor acknowledges and agrees that its obligation to defend the City 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 City and continues at all times thereafter. The City 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; The City's failure to notify Contractor promptly of any Loss shall not relieve Contractor of any liability to the City's pursuant to Section 9.1, unless such failure materially impairs Contractor's ability to defend such Loss. Contractor shall seek the City's prior written consent to settle or compromise any Loss if Contractor contends that the City 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.

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 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 \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations;

c. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

d. 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.

10.2 **Additional Requirements.** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed:

a. To name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

b. To 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. To provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address in Article 16, entitled "Notices and Other Communications."

10.3 **Required Post-Expiration Coverage.** 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.

10.4 **General Annual Aggregate Limit/Inclusion of Legal or Defense Costs.** 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.

10.5 **Evidence of Insurance.** 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.

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

10.7 **Waive 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.

10.8 **Insurance Lapse.** 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.

10.9 If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

10.10 Notwithstanding the foregoing, the following insurance requirements are waived or modified in accordance with the terms and conditions stated in Appendix C.

ARTICLE 11

LOSS OR DAMAGE TO EQUIPMENT

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, only as caused by the negligent or wrongful actions of City's officers, agents and employees.

ARTICLE 12

EVENTS OF DEFAULT

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

a. Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

6.3.	Submitting False Claims; Monetary Penalties.	14.	Assignments
7.	Taxes	16.	Compliance with laws
10.	Insurance	16.5	Alcohol and Drug-Free Workplace
13.	Disclosure of Information and Documents		
13.1	Proprietary or confidential information of City		

b. Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

c. Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any

bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

d. A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

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

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

ARTICLE 13

DISCLOSURE OF INFORMATION AND DOCUMENTS

13.1 **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.

13.2 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

ARTICLE 14

ASSIGNMENTS

14.1 **No Assignment.** The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. 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.

14.2 **No Public or Private Offerings.** Without limiting the scope of Section 14.1, 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.

14.3 **Agreement Made in Violation of this Article.** Any agreement made in violation of Section 14.1 or 14.2 shall confer no rights on any Person and shall automatically be null and void.

14.4 **Assignor Retains Responsibility.** No assignment or transfer pursuant to this Article 14 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 15

NOTICES AND OTHER COMMUNICATIONS

15.1 **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 nonessential communications may be by telephone or email.

Any notice of default must be sent by registered mail.

15.2 **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. 430, San Francisco, CA 94102 – 4685.

15.3 **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.

15.4 **Change of Address.** From time to time any party hereto may designate a new address for purposes of this Article 15 by notice to the other party.

ARTICLE 16

COMPLIANCE

16.1 **Local Business Enterprise Utilization; Liquidated Damages**

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

b. **Compliance and Enforcement.** If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The City Administrator, the Director of the Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "CMD Director") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The CMD Director will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to

Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the CMD Director shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the CMD Director or the Controller upon request.

16.2 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-I01) 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.

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

16.4 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

16.5 **Drug-Free Workplace Policy.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

16.6 **First Source Hiring**

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.

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:

a. 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