

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

**Agreement between the City and County of San Francisco and
Agurto Corporation, dba Pestec**

TC-83590

Integrated Pest Management Services for City Owned Buildings and Properties

This Agreement is made this 15th day of May, 2017, in the City and County of San Francisco ("City), State of California, by and between Agurto Corporation dba Pestec 1555 Yosemite Ave #46, San Francisco, CA 94124 ("Contractor") and City.

Recitals

WHEREAS, the Office of Contract Administration and the Department of the Environment wish to obtain integrated pest management services for City owned buildings and properties; and,

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposal ("RFP") issued on April 5, 2017, in which City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, there is no Local Business Entity ("LBE") subcontracting participation requirement for this Agreement; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement; and

WHEREAS, the City's Civil Service Commission approved Contract number 49918-16/17 on May 15, 2017;

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 "Agreement" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein.

1.2 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and the "requesting Departments."

1.3 "CMD" means the Contract Monitoring Division of the City.

1.4 "Contractor" or "Consultant" means Agurto Corporation dba Pestec 1555 Yosemite Ave #46, San Francisco, CA 94124.

1.5 "Deliverables" means Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.

1.6 "Department Representative" means a City employee designated as responsible for supervising Contractor's pest management activities for a particular facility or department.

1.7 "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.8 "ENV" means the San Francisco Department of the Environment.

1.9 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations upon Contractor.

1.10 "Party" and "Parties" mean the City and Contractor either collectively or individually.

1.11 "Requesting Department" means the City department ordering services under this contract.

1.12 "Services" means the work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the later of: (i) May 15, 2017; or (ii) the Effective Date and expire on May 14, 2020, unless earlier terminated as otherwise provided herein.

2.2 The City has two options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty,

liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 Guaranteed Maximum Costs. The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 Payment. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Purchaser, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed \$7,500,000 (Seven Million Five Hundred Thousand Dollars). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to both parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until the requesting City department approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.3 Withhold Payments. If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 **Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City as specified in 3.3.6 ,” or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.5 **Reserved. (LBE Payment and Utilization Tracking System)**

3.3.6 **Getting paid for goods and/or services from the City.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach..

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

3.4 **Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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.

3.6 Reserved. (Payment of Prevailing Wages)

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services provided for in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.2 Qualified Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 Subcontracting.

4.3.1 Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.3.2 City's execution of this Agreement constitutes its approval of the subcontractors listed below.

4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.4.1 Independent Contractor. For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not

limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 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 Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.6 Warranty. Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 **Required Coverages.** 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:

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

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) 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.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) 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.

5.1.3 All policies shall be endorsed 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 set forth in Section 11.1, entitled "Notices to the Parties."

5.1.4 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.

5.1.5 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.

5.1.6 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.

5.1.7 Before commencing any Services, 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. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

5.1.8 The Workers' Compensation policy(ies) 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.

5.1.9 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.

5.2 **Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

Contractor shall indemnify and hold City harmless from all loss and liability, including 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 arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF 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, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 Liability for Use of Equipment. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 Liability for 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.

Article 7 Payment of Taxes

7.1 Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, 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.

7.2.3 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.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

(f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to

the satisfaction of City, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the Services or other work.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 City's payment obligation under this Section shall survive termination of this Agreement.

8.2 Termination for Default; Remedies.

8.2.1 Each of the following shall constitute an immediate 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:

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment	10.13	Working with Minors
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	13.1	Nondisclosure of Private, Proprietary or Confidential Information

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(c) 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) A court or government authority enters an order (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.

8.2.2 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, where applicable, 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: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.2.3 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. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.3 **Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

8.4 Rights and Duties upon Termination or Expiration.

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	9.1	Ownership of Results
3.3.7(a)	Grant Funded Contracts - Disallowance	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	13.1	Nondisclosure of Private, Proprietary or Confidential Information

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights In Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever

determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/ .

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 **Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 **Reserved.**

10.5 **Nondiscrimination Requirements.**

10.5.1 **Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 **Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

10.7 Minimum Compensation Ordinance. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

10.8 Health Care Accountability Ordinance. Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

10.9 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. 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.

10.11 Limitations on Contributions. By executing 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, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.12 Reserved. (Slavery Era Disclosure)

10.13 Reserved. (Working with Minors)

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Reserved. (Public Access to Nonprofit Records and Meetings)

10.16 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 Reserved. (Sugar-Sweetened Beverage Prohibition)

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

10.19 Reserved. (Preservative Treated Wood Products)

Article 11 General Provisions

11.1 Notices to the Parties. Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: Daniel Sanchez, Purchaser
Office of Contract Administration
City Hall Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
(415)554-6735
Daniel.j.sanchez@sfgov.org

To Contractor: Luis Agurto Jr.
1555 Yosemite Ave #46
San Francisco, CA 94124
(415)671-0300
luis@pestecipm.com

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Americans with Disabilities Act. Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 Reserved.

11.4 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.

11.5 Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.2 **Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.7 **Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.8 **Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.9 **Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 **Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules 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 as they may be amended from time to time.

11.11 **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.

11.12 **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, 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.

11.13 **Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated April 19, 2017. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

Article 12 Department Specific Terms

12.1 **Reserved.**

Article 13 Data and Security

13.1 **Nondisclosure of Private, Proprietary or Confidential Information.**

13.1.1 If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the 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 or confidential information.

13.2 **Reserved. (Payment Card Industry ("PCI") Requirements)**

13.3 **Reserved. (Business Associate Agreement)**


Article 14 MacBride And Signature

14.1 **MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

Recommended by:

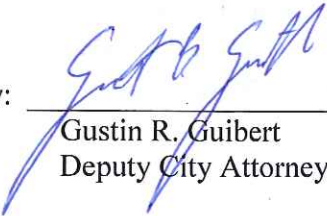


Chris Geiger
Integrated Pest Management Program Manager
Department of the Environment

Approved as to Form:

Dennis J. Herrera
City Attorney

By:



Gustin R. Guibert
Deputy City Attorney

Approved:



Jaci Fong
Director of the Office of Contract Administration,
and Purchaser

Appendices

- A: Scope of Services
- B: Calculation of Charges

CONTRACTOR

Agurto Corporation dba Pestec



Signature of Authorized Representative

Luis Agurto Jr.

Name of Authorized Representative

President + CEO

Title

City vendor number: 69455

Appendix A Scope of Services

1. Description of Services

Each City department will be responsible for working with contractor to develop the scope of its services under this contract. The services will be purchased on an as-needed basis and Contractor is not promised a certain amount of work.

Contractor agrees to perform the following Services:

This contract is for Integrated Pest Management (IPM) services for City owned buildings and properties. IPM is a decision-making process that utilizes regular monitoring to determine if and when treatments are needed, and to evaluate their effectiveness. The goal of IPM is to achieve long-term, cost-effective, and environmentally sound pest control. IPM programs employ a mix of biological, cultural, mechanical/physical, educational, and least-toxic chemical strategies and tactics to keep pest numbers low enough to prevent intolerable damage or nuisance. Non-chemical methods and pest prevention are emphasized, and pesticides are used only as a last resort when other approaches prove insufficient. The Contractor will be required to comply with all policies and requirements of Chapter 3 of the San Francisco Environment code (aka IPM Ordinance). These include the preferred use of non-chemical methods, posting prior to and after use of pesticides, record keeping, data reporting, use of only those chemical controls included on the City's Reduced Risk Pesticide List, preparation of written IPM plans, and submission of an exemption request and receipt of approval before use of pesticide products not on the list.

A. Overview

The Contractor shall furnish all supervision, labor, materials, and equipment necessary to successfully implement structural IPM programs and public health IPM programs at several City locations. When needed or appropriate, the Contractor shall also provide detailed, site-specific recommendations for structural and procedural modifications to aid in pest prevention.

All of the Contractor's services should fall within the IPM definition outlined above. The Contractor is to seek the cooperation of the City's building management and City's building occupants to ensure compliance with the City's IPM Ordinance and to effectively prevent and reduce pest infestations in and around City buildings. In cases where the contractor deems such cooperation inadequate to successfully manage pests using IPM principles, the contractor will notify the Department Representative and/or the

ENV IPM Manager (Chris Geiger, 415-335-3759, chris.geiger@sfgov.org) in a timely fashion. The Contractor or Contractor's representative will also be required to attend and participate in regularly scheduled meetings and activities as listed below.

Any City department can use contractor for the services contained in this contract. Work sites will be numerous and varied. Some work sites may be located outside the City/County limits.

The contractor shall provide only qualified pest management personnel with experience in the conduct of IPM programs. Upon request, the Contractor shall provide the Department Representative with the names of all pest management personnel who might be assigned to this contract, and pertinent information regarding their qualifications, experience and training. Any employee found unqualified by the Department Representative for the position to which he/she is assigned will be removed by the Contractor and replaced immediately with a qualified employee, at no additional cost to the City.

Throughout the life of this contract, all personnel providing on-site pest management services must be appropriately licensed and certified by the California Department of Pesticide Regulation (CDPR) and the California Structural Pest Control Board (CSPCB) in accordance with California State law and as listed in Section E "Licenses and Certifications" below.

The following are work tasks assumed necessary to provide IPM Services to City owned buildings and properties.

B. Pest Management Services Covered by this Contract

The Pest Management Services under this contract will include, but are not limited to, the following:

1. Performance of services that are regulated by the California Structural Pest Control Board Branch 2 (general pests) structural pest control license. Branch 2 services cover a variety of insect, rodent, and bird pests within structures. Management of wood destroying organisms, landscape pest and weed management, and fumigation of structures are not included in this contract.
2. Performance of IPM services for individual vertebrates including feral cats, foxes, ground squirrel, opossums, raccoons, skunks, located indoors or outdoors, that are determined by the Department Representative to be causing unacceptable property damage, nuisance or hazard.
3. Pick-up, humane euthanasia, and proper disposal of dead vertebrates
4. Control of mosquitoes for public health purposes on public properties. The control of mosquitoes requires special licensing and coordination with the San Francisco Department of Public Health and San Francisco Public Utilities Commission.

5. Suppression or removal of other kinds of pests that appear in high numbers (such as feral pigeons and other pest birds), or that may be vectoring pathogens that pose potential health risks to humans (such as bats or ticks). These services will be considered Special Services and billed as such (see Section C.3. "Category 3: Special Service" below).
6. Pest Exclusion and Prevention. The Contractor shall communicate in writing to the Department Representative any minor structural repairs needed to prevent pest entry or eliminate pest habitat, for example, sealing cracks, screening holes, or installing door sweeps. If the affected City department is unable to complete these minor repairs using City staff, the Department Representative may authorize the Contractor to complete these repairs. In such a situation, the Contractors shall charge for such services at the "ongoing service" hourly rate plus materials costs. If the facility in question does not have an IPM Plan already in place, the Contractor shall charge at the "short term service" rate for such work. Prior to embarking on such work, the Contractor must receive authorization in writing from the Department Representative. Under no circumstances should the Contractor's services be employed to conduct general repairs not specifically required for pest prevention.
7. Since additional licenses, outside of those listed in Section E "Licenses and Certifications" below, may be required for certain services, a determination shall be made on a case by case basis by the ENV IPM Program Manager whether the awarded Contractor is able to complete the work or whether an outside Contractor must be contacted to complete the work.

C. IPM Service Categories and Specifications

The Contractor will be responsible for five (5) general categories of IPM services: Short Term IPM Service, Ongoing IPM Service, Special Service, Training and Consultation Service, and Public Health Service in City streets. The decision of which service category to employ rests with the Department Representative, with the exception of "Ongoing IPM Service:" Any facility that does not have a signed, current IPM plan (see C.2. "Category 2 Ongoing IPM Service" below) is not eligible for the "Ongoing IPM Service" rate Contractor will charge their hourly rate depending on the category of service provided.

1. Category One: Short Term IPM Service

This category of service addresses minor pest problems that can generally be solved in one or two service calls. It is best suited to small facilities with no history of chronic pest problems. Short-Term IPM Services are provided on an as-needed basis, and do not warrant preparation of a complete written IPM plan or intensive monitoring. Contractor's charge starts at time of arrival and signing in with Department Representative or City personnel responsible for site management. In providing Short-Term IPM services, the Contractor shall provide:

- a. Response time: Contractor must schedule service call within five (5) days of receiving a request from the Departmental Representative.
- b. Initial Inspection: Contractor shall conduct an initial inspection of the facility.
- c. Written Proposal: Contractor shall prepare a brief written proposal to the Department Representative that summarizes the pest problem, population threshold for treatment, and the specific IPM methods to be used to solve the problem and prevent future occurrences. This proposal must also include the estimated number of hours needed and total price quote. The Contractor may charge the "Short-Term IPM Service" rate for preparation of the proposal, with preparation time not to exceed two (2) hours per proposal.
- d. Implementation: Contractor shall implement the proposal after written approval by the Department Representative.
- e. Service Report: The Contractor's representative performing the service shall complete, sign and date a service report form, provided by Contractor, and return it to the Department Representative's office on the same day the service is performed. The service report form should include a summary of the nature and extent of the pest problem, treatment measures taken, recommendations for pest proofing, and any other pertinent information. This form shall be signed off by the Department Representative and a copy retained at the facility, along with any relevant monitoring forms.
- f. Charges: Contractor shall charge under the "Short-term IPM Service" hourly rate as listed on the bid sheet. Materials costs shall be invoiced as separate line items and shall be invoiced at cost plus (+) a ten percent (10%) up-charge. Contractor must provide documentation of materials costs, which may include original invoices, if requested by ENV IPM Manager or Department Representative
- g. Contractor shall comply with all IPM Ordinance posting, recordkeeping, and other requirements.
- h. Certified services: If the Contractor is EcoWise, GreenShield or GreenPro certified, then all services to the City (billed as "Short-term IPM Service") must be EcoWise, GreenShield or GreenPro certified services.

2. Category Two: Ongoing IPM Service

This category of service addresses more complex or chronic pest problems, and is suited for larger facilities, or any situation where pest management is required on a regular basis. Ongoing IPM services are the preferred approach for effective pest management. In providing Ongoing IPM Services, the Contractor shall provide:

- a. Response time: For cases where the departmental representative has requested ongoing IPM service, Contractor must schedule initial inspection within 20 days of receiving a request from the Departmental Representative.

- b. Initial inspection: The purpose of this initial inspection is for the Contractor to evaluate the pest management needs of the premises and to discuss these needs with the department representative.
- c. IPM plan preparation: Following the initial inspection, the Contractor shall develop a written IPM plan for each facility, which must be submitted to the Department Representative for approval. The IPM plan shall include components described in section C.2.m. "Components of IPM Plans" below as well as an estimate for hours and total price.
- d. IPM plan submission and approval: The IPM Plan shall be submitted to the Department Representative not more than ten (10) working days following the initial inspection. If the plan is rejected, the Contractor shall have three (3) working days to submit a revised Plan. Once the IPM plan is approved by the Department Representative, it shall be the Contractor's responsibility to carry out work according to the IPM Plan, and to file a copy of the final plan with ENV. Contractor may not charge more than four (4) hours of time for IPM plan preparation without prior approval from the Departmental Representative.
- e. Interim service schedule: Before approval of an IPM Plan by the affected City department, and at the discretion of the Department Representative, the Contractor may provide interim pest management services within the scope of this contract at "Short-Term IPM Service" hourly rates. Charges for inspection and preparation of the IPM plan shall also be charged at the "Short-Term IPM Service" hourly rate.
- f. IPM plan revisions: Each On-going IPM Service plan shall be reviewed at least once every three years by both the Department Representative and the Contractor, and renewed or adjusted as conditions warrant. Any changes in the IPM Plan must first receive the approval of the Department Representative.
- g. Service Report: For each service visit, a service report form, provided by contractor, should be completed as described in "Short-Term IPM" services above. In addition, a copy of the form shall be placed in the Log Book at the conclusion of each service visit, along with a copy of the pest monitoring form.
- h. Structural repairs and pest prevention: If the Contractor has previously recommended sanitation or exclusion measures, and if the department has not yet fulfilled these recommendations, the Contractor shall notify the department of this situation in the service report. Thereafter, if the problem is not solved in a reasonable number of return visits due to the facility not following Contractor recommendations, the Contractor may contact ENV to help mitigate the problem.
- i. Compliance is required with all IPM Ordinance requirements.
- j. Charges: Once the IPM plan is approved by the Department Representative, the contractor shall charge the "Ongoing IPM Service" rate as listed on the bid sheet. Materials costs shall be invoiced as separate line items and shall be invoiced at cost plus (+) a ten percent (10%) up-charge. Contractor must provide documentation of materials costs, which may include original invoices, if requested by ENV IPM Manager or Department Representative

- k. Pest log books: The Contractor shall be responsible for maintaining a complete and accurate Pest Management Log Book at each facility that is served under the contract. The Log Book shall be updated at each visit by the Contractor, shall be clear and legible, and shall document the number of Contractor employees present, each Contractor employee's name, each Contractor employee's identification number and each Contractor employee's time in and time out. If the facility lacks a log book, the Contractor is responsible for providing one. The Log Book shall contain at minimum the following items:
- i. A copy of the IPM plan and/or service schedule for the building.
 - ii. If applicable, a list of pesticides used, including trade name and active ingredients. NOTE: only pesticides selected from the Reduced-Risk Pesticide List are authorized for use on City property.
 - iii. Copies of sample labels and safety data sheets (SDS) for each pesticide product used.
 - iv. (As appropriate) Pest Sighting Sheets, preferably in floor plan map format, which the Contractor posts in break rooms or other locations convenient to facility occupants. The Sheets are used to gather information on pest presence from building occupants. Contractor shall be responsible for posting and collecting the sheets.
 - v. The location of all traps and bait stations on the premises, preferably in map format. All traps and bait stations should be numbered.
 - vi. Copies of all service report forms for the facility.
- l. Certified services: If the Contractor is EcoWise, GreenShield or GreenPro certified, then all services to the City (billed as "Ongoing IPM Service") must be EcoWise, GreenShield or GreenPro certified services. (See Section I.I.E.2 "Independent Certifications" below).
- m. Components of IPM Plans for "Ongoing IPM Service" Category

The following components must be included in all written IPM plans submitted to Department Representatives for "Ongoing IPM Services".

- i. Management objectives: Identify key pests to be controlled, level of control desired (thresholds) and areas of the facility requiring special attention.
- ii. A Communication and Accountability System: Designate contact people and alternates at both the facility and at the Contractor's company. Establish location of pest activity log book(s) at the facility. Establish procedure for Contractor to report facility maintenance or pest prevention needs to appropriate staff at the facility.
- iii. Schedule of service: Describe expected schedule and duration of service visits required to meet management objectives.

- iv. **Monitoring Program:** Describe monitoring approach, including the use of traps and/or inspections.
- v. **Description of IPM Methods and Products:** Summarize non-chemical IPM methods proposed. List city-approved pesticide products proposed for use in the program together with the rationale, proposed methods of use, and methods planned to minimize exposure. For each pesticide, list the product name, EPA registration number (if registered), specific building(s) and pests targeted, and where pesticide will be applied, for example, indoors, in wall voids, or outside.
- vi. **Desirable Structural or Operational Changes:** Identify pest-proofing activities or modification of staff operational methods or timing that would improve pest management efforts, for example, sealing around pipes.
- vii. **Record-keeping System:** Describe data to be collected and provide a sample monitoring form designed to track data on pest location, populations, harborage, trends in pest populations, status of previously suggested pest exclusion and prevention measures for which facility staff are responsible, and other relevant information.
- viii. **Exemptions:** If exemptions have been granted by ENV for the use of pesticide products not listed on the current San Francisco Reduced Risk Pesticide List (SFRRPL), exemption approvals should be included in the Pest Log.
- ix. **(Optional – as appropriate) Education and Training Activities:** List recommended education and training activities for facility staff that would increase their support for IPM activities.

3. Category Three: Special Service

This category of service addresses urgent pest problems that must be addressed as soon as is practical. They are not return visits resulting from other routine services provided under the Contract.

- a. **Response time:** The Contractor shall address Special Service pest problems within 24 hours of the service call.
- b. The Contractor shall charge the “Special Service” rate for these services but must notify the requesting department in writing via email that the special rate applies before performing the service.
- c. In the event that such services cannot be completed within the above-stipulated time frame, the Contractor shall immediately notify the user department representative in writing via email and indicate an anticipated completion date.
- d. Contractor will comply with all IPM Ordinance and recordkeeping requirements as described below.

4. Category Four: Training and Consultation Service

This category of service addresses training and consultation services to be provided to City Staff.

- a. The Contractor shall provide additional consultation, training, and technical support, by phone or in person, to Department Representatives, or the ENV IPM Program Manager during City business hours (8am-5pm).
- b. These services shall be charged at the "Training & Consultation" service rate. The Contractor must notify the City staff member requesting the service in writing via email that this billing rate applies before providing the service.
- c. The training & consultation rate also applies for Contractor time spent in meetings or trainings organized by ENV IPM in excess of 4 hours per month. See Section F "Training and Site Visit Requirements" below for more information.

5. Category Five: Public Health Service

This category of service includes, but is not limited to, mosquito and rodent abatement efforts conducted on City properties for the purpose of addressing public health hazards.

- a. Mosquito management in the catchment basins and sewers of City streets constitutes a significant portion of this contract. On a seasonal basis the Contractor will be required to provide all aspects of a mosquito IPM program, including but not limited to monitoring and trapping, distribution of larvicidal treatments, tracking of treatment timing and location, response to mosquitoes and follow-up. The Contractor will be responsible for coordinating its mosquito IPM activities with mosquito IPM activities at other City facilities to the greatest extent possible.
- b. The Contractor may also be required to implement rat IPM programs that involve trapping, baiting and/or monitoring.
- c. In situations where the contractor is traveling to multiple City sites in the same business day for work assignments under the "Public Health" service, Contractor can include transportation time as part of the "Public Health Service" rate charge. The primary example of this is the treatment for mosquito larvae in catchment basins where contractor will be required to travel from catchment basin to catchment basin to treat mosquito larvae (there are 22,000 total catchment basins). Contractor can include the transportation time from one basin to the other as part of the "Public Health Service" charge. Charges may not begin until arrival at the first monitoring/treatment site, must end at the departure from the last monitoring/treatment site, and may not include lunch or other breaks. Transportation charges shall be listed on the invoice as a separate line item with number of hours and the "Public Health Service" hourly rate listed.

D. Pesticide Use

1. Pesticide Application Restrictions

As a general rule, application of pesticides shall not occur unless monitoring indicates the presence of pests in that specific area. Preventive use of pesticides is acceptable only in rare cases, where monitoring indicates that a potential insect or rodent infestation could occur, and with approval from the Department Representative.

Under the IPM Ordinance, all chemical pesticides are banned for use on City property, EXCEPT those listed on the SFRRPL. This list is updated annually. It is the Contractor's responsibility to be familiar with the current version of the SFRRPL, and to comply with its limitations. The current SFRRPL is available from the Dept. of the Environment at:

<https://sfenvironment.org/pest-management-for-city-departments#list>

The Contractor shall fill out the required Exemption forms (described in the IPM Ordinance) when new or additional products are desired for use. These forms shall be submitted to ENV, whose approval is required before the requested products may be used. Pesticides needed to address an emergency situation for which non-pesticide methods are not feasible (Environment Code Section 307(e)) may be used without an approved exemption, but an exemption notification must be submitted within 72 hours of the application. The exemption form is found here: <https://sftoxicsreduction.wufoo.com/forms/pesticide-exemption-request/>

2. Posting and Notification Requirements

The Contractor must supply each facility with all pesticide application notification signage required under the IPM Ordinance. Signs must be in the format prescribed by ENV. In the event of a spray application of a pesticide, the Contractor will be responsible for posting the treated area three (3) days prior to applications, with signs remaining in place for four (4) days following the application. Postings that may be required include:

- i.** Permanent indoor pesticide notification signs.
- ii.** Temporary indoor and outdoor notification signs.
- iii.** Pest Sighting Forms

3. Pesticide Use Reporting Requirements

The Contractor shall provide, at no additional cost to the City, monthly electronic pesticide use reports to the ENV IPM Manager. These reports shall list all chemical pest control measures taken at each site. It is the Contractor's responsibility to insure electronic compatibility with the City's existing Pesticide Use Reporting database.

These reports shall be submitted monthly within ten days after the end of each month.

E. Licenses and Certifications

1. Note that all of Contractor's personnel who work on the contract must have the licenses and certifications described in Section V.A. "Minimum Qualifications" of the Request for Proposal dated April 5th, 2017 and here below:
 - a. One onsite supervisor must have an operator's license.
 - b. All onsite staff must have Applicator certification and/or QAC
 - c. All onsite supervisors must have Field Representative licenses
 - d. At least one onsite staff member must have a valid Category K certification for public health pest control
 - e. At least one onsite staff member must have a valid license for animal trapping.

F. Meetings and Site Visit Requirements

The Contractor, or ENV approved Contractor's representative, will be required to attend monthly (2 hour) scheduled meetings of the IPM Technical Advisory Committee, as well as occasional ad hoc meetings, trainings or site visits approved by the ENV IPM Program Manager. For all of the above meetings, the Contractor must provide free of charge up to four (4) hours of his/her time per calendar month. If required attendance at meetings exceeds 4 hours per month, Contractor may charge the convening department at the "Training & Consultation" hourly service rate.

G. Uniforms and Equipment

All personnel, while working in or on government-owned or leased premises, shall have, at a minimum, an easily identifiable uniform bearing the company name and photo ID on hand at all times. Additional personal protective equipment, required by State Law for the safe performance of work, must be determined and provided by the Contractor. Vehicles used by the Contractor must be clearly marked and identified in accordance with State and local regulations.

All written Deliverables, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

2. **Services Provided by Attorneys.** Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

3. **Reports.** Contractor shall submit written reports as requested by the Office of Contract Administration. Format for the content of such reports shall be determined by the Office of Contract Administration. Timely submission of all reports is a necessary and material term of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

4. **Department Liaison.** In performing the services under this Agreement, Contractor's liaison with the Office of Contract Administration will be Daniel Sanchez, and the Contractor's liaison with the Department of the Environment will be Chris Geiger.

**Appendix B
Calculation of Charges**

No invoices for Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

The services will be purchased on an as-needed basis and Contractor is not promised a certain amount of work. Contractor will bill at the following hourly rates:

Line #	Service Type	Hourly Rate
1	Short Term Service	\$140
2	Ongoing Service	\$120
3	Special Service	\$160
4	Training and Consultation Service	\$140
5	Public Health Service in City Streets	\$111

The hourly rates above do not include materials costs. Materials costs shall be invoiced as separate line items and may be invoiced at cost plus (+) a maximum ten percent (10%) up-charge. Materials cost must be verified by supporting documentation to show Contractor's costs for materials.

Contractor is not entitled to reimbursement for mileage, parking or other transportation-related costs, except for those identified in Appendix A "Scope of Services" Section C.5.c.

Contractor is expected to track actual hours worked for each service performed. Payments will not be made for services that are not approved by the City or that are not deemed completed by the City. In order to receive payment, insurance documentation must be current, in accordance with Article 5 of the Agreement. Departments may require service reports from contractor to accompany contractor's invoices, detailing service provided and hours worked.