



**City and County of San Francisco
City Administrator's Office – Risk Management Division**

REQUEST FOR QUALIFICATIONS FOR

Risk Consultation Services

Solicitation # RM-1-2024-2

CONTACT: BOTH kelly.hernandez@sfgov.org and maria-zenaida.camua@sfgov.org

Background

The Risk Management Division is soliciting qualifications from firms (“Firms”) with experience in successfully providing large multi-faceted municipal organizations risk consultation services, to create pools of Firms (“pool(s)”) that are pre-qualified to support the risk management needs of all City departments. There will be a separate pool for each of four distinct Service Areas.

Intent of this Request for Qualification (RFQ)

It is the intent of the Risk Management Division to create four prequalified lists of Firms eligible for contracts within four different Service Areas. The list will be in effect for two (2) years from its date of establishment. In addition, Firms that are rated above the minimum acceptable score will also be separately scored for specific areas of expertise as described in Sections 2.1 through 2.6. Please note, Firms prequalified under this RFQ are not guaranteed a contract, and Firms offered a contract are not guaranteed any work via task orders.

Anticipated Contract Term

The anticipated contract term for contracts resulting from this RFQ may last up to three (3) years, with the option to extend the contract for up to six (6) additional years. Actual contract term may vary, depending upon service and project needs at the City’s sole, absolute discretion. Respondents selected for resulting contract(s) must be available to commence work on or before July 1, 2024.

Anticipated Contract Budget

For each contract resulting from this RFQ, the anticipated not-to-exceed contract budget may vary, depending upon service and project needs at the City’s sole and absolute discretion.

Schedule*

RFQ Issued	April 5, 2024
Deadline for RFQ Questions	April 12, 2024 (1PM PST)
RFQ Answers available online	April 19, 2024
Deadline for RFQ Responses	May 3, 2024 (3 PM PST)
Notice of Intent to Establish a Prequalified List	May 31, 2024
Pool of Qualified Firms Established	June 14, 2024

Important - City’s Supplier and Bidder Resources (including registration)

City Supplier and Bidder Portal:

<https://sfcitypartner.sfgov.org/>

Job Aids for Response Submission via City Portal:

https://sfcitypartnersupport.sfgov.org/support/search?term=bid&authenticity_token=egAx%2FIZWYpSAyjDIggpMWzve1PpE9GL8uZW1gpHcvSg%3D

City’s Sourcing Events (Bid Opportunities):

<https://sfcitypartner.sfgov.org/pages/Events-BS3/event-search.aspx>

Supplier Compliance Questions:

sfcitypartnersupport@sfgov.org

User Support tel. (415) 944-2442

If you have any questions regarding CMD requirements, please contact selormey.dzikunu@sfgov.org.

Submission of Responses Requirements

Responses and all related materials, including all CMD forms, must be received by Deadline for RFQ Responses. You must be a registered Bidder to apply to this RFQ so it is important to follow the instructions at the above links.

Responses must be submitted electronically using method:

- (1) Via e-mail to the Risk Mgmt. Division addressed to both kelly.hernandez@sfgov.org and maria-zenaida.camua@sfgov.org

Check link for updates:

<https://sfcitypartner.sfgov.org/pages/Events-BS3/event-search.aspx>

OR Risk Mgmt. Division website:

<https://sf.gov/risk-management>

The summary of questions and answers pertaining to this RFQ will be posted on the Risk Mgmt. Division website

*Each date subject to change. All hours are Pacific time zone. Check website for latest schedule.

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1. Introduction

1.1 General terms used in this Request for Qualifications (RFQ)

Terms and abbreviations used throughout this RFQ include:

- **CCSF or The City** – The City and County of San Francisco.
- **Contract Monitoring Division (CMD)** – San Francisco Contract Monitoring Division, a department of the City and County of San Francisco.
- **Contractor** – The Respondent(s) awarded a contract for services subsequent to prequalification under this RFQ.
- **Firm** – Any business entity including, but not limited to, companies, nonprofit organizations, educational institutions, and individuals.
- **Local Business Enterprise (LBE)** – A business that is certified as an LBE under S.F. Administrative Code §14B.3. Only certified Small and Micro-LBEs can be used to satisfy the LBE subcontracting participation goal.
- **Respondent/Proposer** – Any entity submitting a response to this Request for Qualifications
- **Response/Proposal** – A Respondent’s proposal submitted in response to this RFQ

1.2 Statement of Need and Intent

What Does the City Seek?

The Risk Management Division of the City Administrator’s Office is soliciting qualifications from Firms with experience in successfully providing large multi-faceted municipal organizations with risk consultation services, to create a list of Firms, including ranking for specific areas of expertise, that are pre-qualified to support the risk management needs of all City departments. The list will be in effect for two (2) years from the date it is established. This Request for Qualifications (“RFQ”) is directed at the specific Service Areas described in Section 2, Scope of Work.

What is the City’s Intent with this RFQ?

The City intends to negotiate agreements for various Service Areas with Firms on the pre-qualified list on an as-needed basis for services indicated in Section 2, Scope of Work. The City may use the pre-qualified list, at its sole and absolute discretion, for selection of Firms and negotiations of contracts on an as-needed basis. Firms selected for the list are not guaranteed a contract, and Firms offered a contract are not guaranteed any work via task orders. Firms that are selected to provide services shall receive a contract with an original term of three (3) years. In addition, the City shall have three (3) options to extend the term for a period of two (2) years each, which the City may exercise in its sole, absolute discretion. The City reserves the right to procure services similar or identical to the services specified in this RFQ by any other means. Multiple contracts may be awarded at the City’s sole and absolute discretion in accordance to San Francisco Administrative Code, Section 21.8.

1.3 Background of the City and County of San Francisco

What is the City?

San Francisco is the fourth largest city in California and serves as a center for business, commerce and culture for the West Coast. The City and County of San Francisco, known as the “City,” was established by Charter in 1850. It is a legal subdivision of the State of California with the governmental powers of both a city and a county under California law. The City’s powers are exercised through a Board of Supervisors serving as the legislative authority, and a Mayor and other independent elected officials serving as the executive authority. The services provided by the City include public protection, public transportation, construction and maintenance of all public facilities, water, parks, public health systems, social services, planning, tax collection, and many others.

What are the Roles and Responsibilities of the City’s Risk Management Division?

The City and County of San Francisco’s Risk Management Division is part of the City Administrator’s Office, and is generally the only City entity authorized to purchase insurance. The Risk Management Division also provides standards for insurance and indemnity language in City contracts, reviews any deviations from these standards, and provides general Risk Management support services and advice to all City departments and enterprises.

2. Scope of Work

This scope of work is a general guide to the work the City expects to be performed and is not a complete listing of all related services that may be required or desired. The City is soliciting qualifications to create a prequalified list of consultant Firms that may be selected for any of the direct or related services described below.

What if My Firm is Interested in Being Considered for More than One Service Area?

Given the broad range of possible opportunities, we encourage Firms to respond for all Service Areas for which they meet or exceed minimum qualifications as described in this RFQ. Please note that qualifications are evaluated separately for each Service Area. Respondents are asked to indicate the Service Areas for which they would like to be considered by completing the last part of RFQ Attachment III for each Service Area they seek to be qualified for.

Is My Firm Expected to Propose for a Specific Project?

No. The Risk Management Division will create a list of prequalified Firms, including ranking resulting from the evaluation process detailed in this RFQ, for each specific Service Area. Each Respondent should demonstrate its capabilities by providing concise but comprehensive responses. The City will negotiate the specific scope of services, budget, deliverables and timeline with prequalified Firms selected for contract negotiations. There is no guarantee of a minimum amount of work or compensation for any Respondent(s) selected for contract negotiations. The City may select Contractors from the prequalified list in its sole and absolute discretion in compliance with Administrative Code section 21.4(d).

After the prequalified list has been established, the City may issue Request(s) for Proposals or Request(s) for Quotes to the prequalified Firms to better assess qualifications for a specific scope of service, which may require specific information concerning staffing, scheduling, deliverable, and cost. Alternatively, the City may select the highest available ranked Contractor based on the rankings for a particular Service Area.

Does the City prefer Firms to form a large group or consortium (e.g., joint ventures) to cover more services, or to focus on an area of expertise and respond individually?

The City prefers individual Firm responses focused on the Service Areas for which the Firm and its lead staff can demonstrate possession of appropriate qualifications. For any proposed Respondent partnerships or joint ventures, at least 50% of proposed work effort on the City's projects must come from the lead Respondent Firm.

If insurance needs to be procured for a project receiving Risk Consulting Services under this contract, is my firm eligible to act in an Insurance Brokerage capacity as well as the Risk Consultant on the project?

No. If your firm is providing Risk Consulting Services on a specific project requiring the procurement of insurance, you will not be eligible to act as the Insurance Broker for the project.

Demonstrated expertise is requested for, but is not limited to, the following Service Areas:

(Please Note: A separate response is required for each of the following four Service Areas for which Respondents seek to qualify (see Attachment III for additional details)).

2.1 Service Area 1 - ENTERPRISE RISK MANAGEMENT (ERM) - Provide Enterprise Risk Management consulting services to assist City and/or its departments in the assessment of its risks and utilize the City's preferred enterprise solution to mitigate, measure, and improve the City's risk profile.

2.2 Service Area 2 - PROJECT INSURANCE ANALYSIS/ CONSULTATION - Provide consultant services and analysis including but not limited to: plan document review, creation, or revision; feasibility studies for Owner Controlled Insurance Program ("OCIP"), Contractor Controlled Insurance Program ("CCIP"), etc.; Risk Modeling; Self-Insurance Retention ("SIR") forecasting and self-insurance analysis; and surety bond and loan guarantee programs.

2.3 Service Area 3 - ALTERNATIVE RISK TRANSFER PROGRAM ANALYSIS/ CONSULTATION - Prepare work plans, analyze industry data, and City finance systems to explore and evaluate various available methods of alternative risk transfer to include but not limited to:

- Joint Powers Authority (JPA) formation or development
- Captive Insurance formation and development
- Plan document feasibility & creation for Property insurance or other insurance coverage lines or programs currently insured or self-insured to include builder's risk or any project involving City funding.

2.4 Service Area 4 – P3 PROJECT INSURANCE AND RISK MANAGEMENT

ADVISORY SERVICES – Assist and advise in allocating risks in the contracts, develop insurance requirements for the P3 contracts and review any insurance policies that are placed for various projects.

- A. Review documents to include but not limited to:
 - a. Project plans and activities - Drawings, project schedules, plans, environmental reports, etc.
 - b. Contract-related documents pertaining to insurance – RFPs, draft contracts, etc.
 - c. Evidence of Insurance submitted to ensure compliance with the contract insurance requirements
- B. Assist the project team in answering questions from prospective P3 entities pertaining to insurance during the RFP stages of the project;
- C. Identify risks of property and liability loss arising out of activities during all phases of the project;
- D. Develop contract insurance requirement terms and conditions for approval by the project managers, City Attorney, and other legal advisors to help effectively allocate responsibility for managing and financing risks;
- E. Author insurance requirements for the P3 contract to include each of the phases of the project: design, build, finance, maintain, and operate, and include benchmarking provisions within the insurance requirements
- F. Assist project managers and legal counsel with negotiations involving insurance contract requirements in agreements between the Project owners and various contractors and service providers;
- G. Review provided evidence of insurance for compliance with contract specifications;
- H. Advise project managers, owners and legal counsel of any findings or problems involving insurance and risk allocation;
- I. Participate in conference calls, videoconferences and other communications as required;
- J. Be available to answer questions or perform assignments relevant to the risk and insurance aspects of the project;
- K. Review and analyze annual benchmarking data submitted by the P3 entity
- L. Throughout each phase of the project, receive and analyze documents and other information provided by the P3 entity to determine compliance with insurance and other requirements
- M. Review insurance policies and other insurance-related materials for policies that are placed for the projects and advise of any deficiencies in those placements; and
- N. Provide ongoing insurance consultation throughout the projects on an as needed basis

3. City-Respondent Communications

*There will **not** be a Pre-Response Conference for this RFQ. Respondents are specifically directed NOT to contact any employees or officials of the City other than those specifically designated in this RFQ and its Attachments. Unauthorized contact may be cause for rejection of responses at the City's sole and absolute discretion.*

3.1 Deadline for RFQ Questions

Please e-mail any questions to both kelly.hernandez@sfgov.org and maria-zenaida.camua@sfgov.org.

No oral questions will be accepted. Questions, in accordance with the below schedule, must be in writing and received before the **Deadline for RFQ Questions**. No questions will be accepted after this time with the exception of those concerning City vendor compliance. All inquiries should include the number and title of the RFQ. Substantive replies will be memorialized in written addenda to be made part of this RFQ. This RFQ will only be governed by information provided through written addenda.

3.2 Summary of Information Requested and Presented

A summary of all addenda, questions and answers pertaining to this RFQ will be posted on the City's Risk Management Division's website ("Website"). It is the Respondents' responsibility to check this Website for any updates. The City recommends that Respondents check the Website for updates on a daily basis at a minimum.

3.3 City Communication Following Receipt of Responses

The City may contact the Respondents for clarification or correction of minor errors or deficiencies in their Responses prior to deeming a Response as non-responsive. Clarifications are "limited exchanges" between the City and a Respondent for the purpose of clarifying certain aspects of the Responses, and do not give a Respondent the opportunity to revise or modify its Response. Minor errors or deficiencies are defined as those that do not materially impact the City's evaluation of the Proposal; for example, failing to label the "original" Response as an "original." For information regarding the City's Evaluation Process, see RFQ Section 5 - Evaluation Criteria.

4. Response Submission Requirements

4.1 Time and Place for Submission of Responses

ALL SUBMISSIONS IN RESPONSE TO THIS RFQ MUST BE VIA EMAIL OR VIA SECURE SITES FOR FILE TRANSFER/DOWNLOAD. MATERIALS MUST BE IN PDF FORMAT. VERY LARGE FILES MUST BE BROKEN INTO SEPARATE SMALLER PDF FILES IF DELIVERED VIA EMAIL. OTHER RESPONSE FORMATS WILL NOT BE REVIEWED.

Late submissions will not be considered

If you do not receive a confirmation email regarding receipt of your response, please call the Risk Management Division at 415-554-2301 or 415-554-2305.

4.2 Response Package

Complete, but concise responses, are recommended for ease of review by the Evaluation Team. Responses should provide a straightforward, concise description of the Respondent’s capabilities to satisfy the requirements of the RFQ for the applicable Service Area(s). Marketing and sales type information should be excluded. All parts, pages, figures, and tables should be numbered and clearly labeled.

For word processing documents, the department prefers that text be unjustified (i.e., with a ragged-right margin) and use a serif font (e.g., Times Roman, and not Arial), and that pages have margins of at least 1” on all sides (excluding headers and footers).

Please note that there is a **page limit** for Attachment III. Respondents may submit no more than ten (10) pages to demonstrate they meet or exceed the minimum qualifications set forth in Section 5.3A of this RFQ and no more than ten (10) additional pages to demonstrate experience related to each specific Service Area for which a Respondent seeks to qualify, per section 5.3B of this RFQ. If RFQ Attachment III exceeds the page limit for any given Service Area, then the pages beyond the page limit will not be evaluated for that Service Area. Include copies of resumes in RFQ Attachment III. Copies of resumes do not count towards the page limit.

Response Item Checklist

RFQ Attachment I – Proposer Questionnaire & References

RFQ Attachment II – City’s Agreement Terms and Conditions

RFQ Attachment III – Response Template including Specific Areas of Expertise

Each Attachment must include all documents submitted for that Attachment in one, separate, complete file. Each of these separate files must be titled with Respondent’s name and Attachment number (e.g. **ABC Company Attachment I, ABC Company Attachment II**), in that **specific order**. Each file should include signatures, where applicable.

Respondents are advised to review RFQ Attachments I through II before beginning work on Response Template in RFQ Attachment III to ensure that City’s requirements can be met.

4.3 Content

Firms interested in responding to this RFQ must submit the information required in Section 5, in the order specified in Attachment III: Response Template. Even if using an alternative format for your response, the information in Attachment III must be included in the order specified to be scored appropriately.

Responses received under this RFQ that fail to address each of the requested items in sufficient and complete detail to substantiate that the Respondent can meet the City's minimum qualifications, will be deemed non-responsive and will not be considered for prequalification. Note that responses stating, "to be provided upon request" or "to be determined" or the like, or that do not otherwise provide the information requested (left blank) are not acceptable and shall be deemed non-responsive.

4.4 Redact Confidential or Proprietary Information

All documents under this solicitation process are subject to public disclosure per the California Public Records Act (California Government Code Section §6250 et. Seq) and the San Francisco Sunshine Ordinance (San Francisco Administrative Code Chapter 67).

4.4.1 Responses to RFQs, contracts, and all other records of communications between the City and Respondents shall be open to inspection immediately after a contract has been awarded. Nothing in this Administrative Code provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit *until and unless that person or organization is awarded the contract.*

4.4.2 If the City receives a Public Records Request ("Request") pertaining to this solicitation, City will use its best efforts to notify the affected Proposer(s) ("Proposers") of the Request and to provide the Proposer with a description of the material that the City deems responsive and the due date for disclosure ("Response Date"). If the Proposer asserts that some or all of the material requested contains or reveals valuable trade secret or other information belonging to the Proposer that is exempt from disclosure and directs the City in writing to withhold such material from production ("Withholding Directive"), then the City will comply with the Withholding Directive on the condition that the Proposer seeks judicial relief on or before the Response Date. Should Proposer fail to seek judicial relief on or before the Response Date, the City shall proceed with the disclosure of responsive documents.

5. Evaluation Criteria

This section describes the guidelines used for analyzing and evaluating the responses and for Respondent prequalification. It is the City's intent to prequalify Respondent(s) that present the best overall qualifications to the City that will provide the best overall service package. Consultant Firms selected for prequalification are not guaranteed a contract. This RFQ does not in any way limit the City's right to solicit contracts for similar or identical services if, in the

City's sole and absolute discretion, it determines that a prequalified list is inadequate to satisfy its needs.

There are two phases to the evaluation process. City and CMD staff first perform an Initial Screening as described in Section 5.1. Responses that pass the Initial Screening process (5.1) including Minimum Qualifications (5.2) will proceed to the Evaluation of Firms (that met Minimum Qualifications) described in Section 5.3.

City representatives will serve as the Evaluation Team responsible for evaluating Respondents. Specifically, the team will be responsible for the evaluation and scoring of the responses for prequalification, and for interviews, if desired by the City.

5.1 Initial Screening

The City will review each response for initial determination on responsiveness and acceptability in an Initial Screening process. Elements reviewed during the Initial Screening include, without limitation: compliance with CMD submission requirements; compliance with Minimum Qualification requirements (Section 5.2); compliance with format requirements; response completeness; and verifiable references.

Responses are not scored during the Initial Screening process. Initial Screening is a pass/fail determination as to whether a response meets the threshold requirements described above. By **Deadline for RFQ Responses**, any response that does not demonstrate that Respondent meets requirements in Sections 5.1 and 5.2 will not be eligible for consideration in the Evaluation of Firms (that met Minimum Qualifications) described below in Section 5.3. The City reserves the right to request clarification from the Respondent prior to rejecting a response for failure to meet the Initial Screening requirements. Clarifications are "limited exchanges" between the City and a Respondent for the purpose of clarifying certain aspects of the Response, and will not give a Respondent the opportunity to materially revise or modify its response.

5.1.1 Local Business Enterprise Goals and Rating Bonuses – RESERVED

5.2 Minimum Qualifications

Any response that does not demonstrate that the Respondent meets these minimum qualifications by the response deadline will be considered non-responsive and will not be evaluated or eligible for award of any subsequent contract(s). The City retains the discretion to seek clarifications and to waive nonresponsive items that it deems immaterial. A separate response must be submitted for each of the four Services Areas for which a Respondent seeks to qualify. Use RFQ Attachment III to indicate the specific Service Area for which your Firm seeks to qualify. Maximum number of pages permitted for responses to this Section 5.2.A regarding minimum qualifications is ten (10) per Service Area.

- A) **FIRM EXPERIENCE:** Two (2) Prior Project Descriptions FOR EACH SERVICE AREA for which Respondent would like to be considered for prequalification, which meet all the following criteria. A Project is a specific assignment, either under a multi-project contract or single-project contract.

- a. The services/experiences described in **each** of the Prior Project Descriptions FOR EACH SERVICE AREA must be comparable to the services the City is requesting, described in RFQ Section 2, Scope of Work, for that Service Area.
- b. The services described must have been provided to public sector municipalities or similar government agency clients.
- c. Successful completion within five (5) years from the issuance date of this RFQ (successful completion means project deliverables have been completed as required) of the services similar to what the City is requesting for the applicable Service Area.
- d. Respondents can qualify using the experience of lead staff that are assigned to the applicable Service Area.
- e. Additionally, Respondents must demonstrate the following extent of experience from these Projects relevant to each applicable Service Area:
 - i. **Service Area 1: ENTERPRISE RISK MANAGEMENT (ERM)** - A minimum five (5) years of experience providing Enterprise Risk Management (ERM) consulting services to cities and counties, with a specific focus and expertise on ISO 31000 guidelines and framework.
 - ii. **Service Area 2: PROJECT COMPLETION ANALYSIS/CONSULTATION** - A minimum five (5) years of experience providing actuarial consulting services including but not limited to the projects and programs described.
 - iii. **Service Area 3: ALTERNATIVE RISK TRANSFER PROGRAM ANALYSIS/CONSULTATION:** A minimum five (5) years of experience preparing work plans, analyzing industry data and City finance systems, to explore and evaluate various available methods of alternative risk transfer, which may include but is not limited to:
 - a. Joint Powers Authority (JPA) formation or development
 - b. Captive Insurance formation and development
 - c. Plan document feasibility & creation for Property insurance or other insurance coverage lines or programs currently insured or self-insured to include builder's risk or any project involving City funding
 - iv. **Service Area 4: P3 PROJECT INSURANCE AND RISK MANAGEMENT ADVISORY SERVICES** - A minimum five (5) years of experience providing comprehensive P3 Project insurance consulting including but not limited to the services described in this RFQ.

B) **STAFFING:** The lead staff proposed to be assigned to the City’s project(s) must individually have had a similar lead role in at least one of the Prior Project Descriptions submitted FOR EACH SERVICE AREA.

5.3 Response Evaluation Criteria for Prequalification

Evaluation Team

City representatives will serve as the Evaluation Team responsible for scoring Respondents’ submissions. Specifically, the team will be responsible for the evaluation and rating of the responses for prequalification, for conducting reference checks, and for interviews, if desired by the City.

Each RFQ Proposal that meets the Minimum Qualifications will be evaluated in accordance with the criteria below. Respondent must receive a score of 75 points or above out of the 100 total possible points for each Service Area to be prequalified for that Service Area. There is no numerical limit to the number of Firms that may be prequalified for each Service Area.

5.3.A1 Firm Qualifications – 25 points

1. Respondent’s Firm history and structure, including total staff size and composition.
2. Pending or current litigation related to consulting services provided by the Firm, if any.
3. Client relationships severed for reasons other than convenience, if any.

5.3.A2 Staff Qualifications – 25 points

1. Clarity and appropriateness of proposed staffing structure.
2. Roles and responsibilities, qualifications, and educational backgrounds of lead staff members.

5.3.A3 Completeness of Response Submission – 10 points

1. Response conforms with RFQ requirements and concisely but comprehensively addresses RFQ requirements;
2. Response is professionally presented and contains organized content and format.

5.3.A4 Experience – 40 points (see below).

5.3B Specific Service Area Expertise – Please submit a maximum of ten (10) additional pages for each specific Service Area for which your Firm desires to be pre-qualified, including the following information:

5.3.B1 Experience –As part of the RFQ Attachment III response FOR EACH SERVICE AREA for which Respondent would like to be considered for prequalification, please include:

1. Expectations of client involvement or level of effort that are appropriate; the proposed approach should demonstrate experience with providing services to comparable clients.
2. Sufficient expertise and methodology to create competitive differences that distinguish your Firm and will be beneficial to the City.
3. Two (2) Prior Project Descriptions FOR EACH SERVICE AREA for which it would like to be considered for prequalification, which meet all the following criteria:
 - a. The services/experiences described in **each** of the Prior Project Descriptions FOR EACH SERVICE AREA that are comparable to the services the City is requesting, described in RFQ Section 2, Scope of Work. This may be the same Project(s) used to meet the minimum qualifications under Section 5.2.
 - b. The services described in **at least one** of the Prior Project Descriptions FOR EACH SERVICE AREA that have been provided to public sector municipalities or similar government agency clients. This may be the same Project(s) used to meet the minimum qualifications under Section 5.2.
 - c. Successful completion within five (5) years from the issuance date of this RFQ (successful completion means project deliverables have been completed as required) of the services the City is requesting. Additionally, Respondents must demonstrate extent of experience in each of the Service Areas below:
 - i. **Service Area 1: ENTERPRISE RISK MANAGEMENT (ERM)** - A minimum five (5) years of experience providing Enterprise Risk Management (ERM) consulting services to cities and counties, with a specific focus and expertise on ISO 31000 guidelines and framework.
 - ii. **Service Area 2: PROJECT COMPLETION ANALYSIS/CONSULTATION** - A minimum five (5) years of experience providing actuarial consulting services including but not limited to the projects and programs described.
 - iii. **Service Area 3: ALTERNATIVE RISK TRANSFER PROGRAM ANALYSIS/CONSULTATION:** Prepare work plans, analyze industry data, and City finance systems to explore and evaluate various available methods of alternative risk transfer to include but not limited to:
 - a. Joint Powers Authority (JPA) formation or development

- b. Captive Insurance formation and development
- c. Plan document feasibility & creation for Property insurance or other insurance coverage lines or programs currently insured or self-insured to include builders risk or any project involving City funding

- iv. **Service Area 4: P3 PROJECT INSURANCE AND RISK MANAGEMENT ADVISORY SERVICES** - A minimum five (5) years of experience providing comprehensive P3 Project consulting including but not limited to the services described.

A minimum score of 75 points is needed for a Firm to be considered prequalified for each individual Service Area.

5.4 Prequalification Process

Respondents scoring 75 points and above for each Service Area may be added to the prequalified list and eligible for potential contract negotiations with the City on an as-needed basis in that Service Area. Respondents that meet this threshold will be ranked in the list based on their scores; such ranking may be the basis for selection for award of a contract pursuant to San Francisco Administrative Code section 21.4 (d). Due to the varied nature of the services to be performed, the City reserves the right to contract with any or all prequalified Respondents.

Reference Checks

Reference checks, including, but not limited to, prior clients as indicated in Attachment II, Prior Project Description(s), may be used to determine the applicability of Respondent experience to the services the City is requesting and the quality of services and staffing provided to prior clients, as well as adherence to schedules/budgets and Respondent's problem-solving, project management and communication abilities, as well as performance on deliverables and outcomes, and effectiveness in meeting or exceeding project objectives. If reference checks deem that information included in a Prior Project Description or elsewhere in the response is untruthful, then the City will reject the response.

Oral Interviews

Interviews may be conducted following the Response Evaluation process at the City's sole discretion. Respondents (who scored 75 points or above) may be invited to Oral Interviews with an Evaluation Team. Oral Interviews, if pursued by the City, will consist of standard questions asked of selected Respondents, and specific questions regarding individual responses. If Interviews are conducted, they will be worth 100 points based on a set of criteria established following review of written responses. The 100 points possible awarded for interviews will be added to the 100 possible points awarded during the Service Area Response Evaluation process for a total of 200 points. **Respondents scoring 150 points and above of the total 200 points will be added to the prequalified list.** The City has sole and absolute discretion over whether interviews will be conducted or not to select Respondents for prequalification.

Release and Waiver Agreement

To effectuate the candid completion of the reference check above, Respondent is required to sign the RFQ Attachment I, Part IV, Release of Liability for References.

5.5 Selection from Prequalified Lists of Consultants

After the pre-qualified list has been established, the City may issue Request(s) for Quotes or Request(s) for Proposals, Oral Selection Interviews/Demonstrations, or conduct Reference Checks for the prequalified consultant list to better assess qualifications for a specific scope of service, which may include staffing, scheduling, deliverable, and cost considerations. The City may instead, at its discretion, select the highest available ranked Respondent based on the ranking of responses to the RFQ. The City reserves the right to request proposals, quotes, oral interviews/demonstrations, and conduct reference checks from vendors in one Service Area or multiple Service Areas simultaneously.

For resulting contracts that are equal to or less than the City's Minimum Competitive Amount, the City may select Contractors from the prequalified list in its sole and absolute discretion instead of issuing further solicitations. The City's Minimum Competitive Amount is \$200,000, effective July 1, 2022.

Award of contracts will be made in a manner consistent with San Francisco Administrative Code Section 21.4(d).

5.6 Other Terms and Conditions

The selection of any prequalified Respondent for contract negotiations shall not imply acceptance by the City of all terms of the response, which may be subject to further negotiation and approvals before the City may be legally bound thereby.

If a satisfactory contract cannot be negotiated in a reasonable time with any prequalified Respondent, then the City, in its sole discretion, may terminate negotiations and begin contract negotiations with any other remaining prequalified Respondents, consistent with San Francisco Administrative Code Section 21.4.

The City, in its sole discretion, has the right to approve or disapprove any staff person assigned to a Firm's projects before and throughout the contract term. The City reserves the right at any time to approve, disapprove or modify proposed project plans, timelines and deliverables. Such approvals will not be unreasonably withheld.

6. Protest Procedures

6.1 Protest of RFQ Terms

Failure of a Respondent to comply with the protest procedures set forth in this section will render a protest invalid and non-responsive, and will result in rejection of the protest.

Should a prospective Respondent object on any ground to any provision or legal requirement set forth in the RFQ (including all Appendices and all Addenda), including but not limited to Protests based on allegations that: (i) the RFQ is unlawful in whole or in part, (ii) one or more of the requirements of the RFQ is onerous, unfair, or unclear; (iii) the structure of the RFQ does not provide a correct or optimal process for the solicitation of the Services; (iv) the RFQ contains one or more ambiguity, conflict, discrepancy or other error; or (v) the RFQ unnecessarily precludes alternative solutions to the Services or project at issue, the prospective Respondent must provide timely written notice of Protest as set forth below.

No later than 5:00 p.m. P.S.T. on the third (3rd) working day of the issuance of the RFQ, a Respondent must submit written notice of any Protest of the RFQ terms via e-mail to both kelly.hernandez@sfgov.org and maria-zenaida.camua@sfgov.org as directed by Section 6.4. Protests or notices of Protests delivered orally (e.g., by telephone) will not be considered.

The written notice of Protest must state the basis for the Protest, refer to the specific requirement or portion of the RFQ at issue, cite all relevant law, and shall describe the modification to the RFQ sought by the prospective Respondent. The Protest shall also include the name, address, telephone number, and email address of the person representing the prospective Respondent.

If necessary, the City at its sole and absolute discretion may extend the response submittal deadline to allow sufficient time to review and investigate the Protest, and issue Addenda to incorporate any necessary changes to the RFQ.

6.2 Protest of Non-Responsiveness Determination

By 5:00 p.m. PST on the fifth (5th) working day of the City's issuance of the subject notice of non-responsiveness, any Respondent that has submitted a response and believes that the City has incorrectly determined that its response is non-responsive, may submit a written notice of protest by e-mail (fax is not acceptable) as directed in Section 6.4. Such notice of protest must be received by the City on or before 5 p.m. PST of the fifth (5th) working day following the City's issuance of the notice of non-responsiveness.

The notice of protest must include a written statement specifying in detail each and every reason asserted for the protest. The protest must be signed by an individual authorized to represent the Respondent, and must cite the law, rule, local ordinance, procedure or RFQ

provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

6.3 Protest of Establishment of Prequalified Consultant List

By 5:00 p.m. PST on the fifth (5th) working day of the City's issuance of a Notice of Intent to Establish a Prequalified Consultant List, any consultant Firm that has submitted a responsive response and believes that the City has incorrectly excluded it from the prequalified list, or incorrectly selected another Respondent for prequalification, may submit a written notice of protest as directed in Section 6.4. Such notice of protest must be received by the City on or before 5 p.m. PST of the fifth (5th) working day after the City's issuance of the Notice of Intent to Establish a Prequalified Consultant List. In the case of Proposers that submit a proposal after the establishment of the prequalified list, the deadline for such Proposers to protest their exclusion from the list is extended to 5pm PST of the fifth (5th) working day after the City's issuance of the updated Prequalified Consultant List.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Respondent, and must cite the law, rule, local ordinance, procedure or RFQ provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

6.4 Delivery of Protests

All protests must be received by the specified dates and time deadlines specified in Section 6.1, 6.2 and 6.3. Protests or notice of protests made orally (e.g., by telephone) or by fax will not be considered.

Protests must be delivered via:

E-mail: both kelly.hernandez@sfgov.org and maria-zenaida.camua@sfgov.org

6.5 Protest Review

The City Administrator's Office will confirm receipt of notice of protest by Respondent which must be submitted in accordance to Section 6.1, 6.2, 6.3, and 6.4.

If a Respondent submits a valid, complete, and timely protest, the City Administrator's Office will review notice of protest soon after receipt of the protest to determine adequacy of notice, including, but not limited to: (1) receipt by due date; (2) inclusion of a written statement specifying in detail each and every one of the grounds asserted for the protest; (3) signed by an individual authorized to represent the Respondent; (4) citation of the law, rule, local ordinance, procedure or RFQ provision on which the protest is based; and (5) specification of facts and evidence sufficient for the City to determine the validity of the protest.

A Respondent may not rely on a Protest submitted by another Respondent, but must timely pursue its own Protest.

The City, at its discretion, may make a determination regarding a protest without requesting further documents or information from the Respondent who submitted the protest or who is the subject of the protest. Accordingly, the initial protest must include all grounds of protest and all supporting documentation or evidence reasonably available to the prospective Respondent at the time the protest is submitted. If the Respondent later raises new grounds or evidence that were not included in the initial protest, but which could have been raised at that time, then the City may not consider such new grounds or new evidence.

If the notice of protest is determined to be valid, the City Administrator's Office shall review facts and evidence to determine the outcome of the protest, citing any applicable laws, rules, ordinances, procedures, and/or provisions. The review shall be an informal process conducted by the City Administrator's Office or its designee and will be based upon the information submitted by the Respondent in its protest letter. The City Administrator's Office may seek input from the City Attorney's Office, Office of Contract Administration, Contract Monitoring Division, and/or other City departments as needed or appropriate. The City Administrator's Office will notify the Respondent in writing of its decision at the conclusion of the review. The City Administrator's Office or their designee shall make the final determination regarding the outcome of the protest. The decision of the City Administrator's Office is final.

7. Vendor Compliance

Respondent Team must fulfill the City's administrative requirements for doing business with the City and become a compliant vendor prior to contract award. Fulfillment is defined as completion, submission and approval by applicable City agencies of the forms and requirements referenced in RFQ Attachment I.

ATTACHMENT I: PROPOSER QUESTIONNAIRE AND REFERENCES

Sourcing Event **RM-1-2024-2**
Attachment 1
Proposer Questionnaire and References

Part I
Proposer Information

Name of Firm:	<input type="text"/>
Headquarter Address:	<input type="text"/>
Phone No.:	<input type="text"/>
Toll Free Phone No.:	<input type="text"/>
Contact Name & Title:	<input type="text"/>
E-mail:	<input type="text"/>
SF Supplier ID:	<input type="text"/>
Federal Tax ID:	<input type="text"/>
Payment Terms:	<input type="text"/>
Person Preparing Bid:	<input type="text"/>
Local Representative Name and Number:	<input type="text"/>

ATTACHMENT I: PROPOSER QUESTIONNAIRE AND REFERENCES

Part II Proposer Questionnaire

Question	Yes	No
<p>1. Have you registered as a Bidder or Supplier, through the Supplier Portal (https://sfcitypartner.sfgov.org/)? If yes, what is your Bidder ID or Supplier ID? _____</p>		
<p>2. Has your company enrolled with Paymode-X to receive electronic payments from the City? https://www.paymode.com/city_countyofsanfrancisco</p>		
<p>3. Have you registered your business with the San Francisco Treasurer & Tax Collector as required prior to submission of any Proposal? <i>Enter your Business Tax Registration ID here:</i> _____</p>		
<p>4. Have you submitted with your Proposal all the <u>Minimum Qualification Documentation</u> outlined in the accompanying solicitation document? If you reply NO to any document, please explain.</p>		
<p>5. Have you submitted with your Proposal all the <u>Required Supporting Documentation</u> outlined in the accompanying solicitation document? If you reply NO to any document, please explain.</p>		
<p>6. Have you submitted with your Proposal a <u>Price Proposal</u> that complies with the requirements of the accompanying solicitation document? If you reply NO to any document, please explain.</p>		
<p>7. Have you submitted with your Proposal a <u>Written Proposal</u> that complies with the requirements of the accompanying solicitation document? If you reply NO to any document, please explain.</p>		

ATTACHMENT I: PROPOSER QUESTIONNAIRE AND REFERENCES

Part III Proposer References

All proposers, including current Contractor, must provide references for at least **three (3)** organizations of the approximate size and volume comparable to commodities and/or services described in this Solicitation. Upon request, successful proposer(s) may also be required to submit a letter of reference from each reference listed within five (5) days of notification. Failure to do so may result in rejection of proposal.

1. Name of Company	<input type="text"/>
Address (street, city, state, zip)	<input type="text"/>
Contact Name	<input type="text"/>
Phone No.	<input type="text"/>
Email	<input type="text"/>
Number of Years Providing Service	<input type="text"/>
2. Name of Company	<input type="text"/>
Address (street, city, state, zip)	<input type="text"/>
Contact Name	<input type="text"/>
Phone No.	<input type="text"/>
Email	<input type="text"/>
Number of Years Providing Service	<input type="text"/>
3. Name of Company	<input type="text"/>
Address (street, city, state, zip)	<input type="text"/>
Contact Name	<input type="text"/>
Phone No.	<input type="text"/>
Email	<input type="text"/>
Number of Years Providing Service	<input type="text"/>

ATTACHMENT I: PROPOSER QUESTIONNAIRE AND REFERENCES

Part IV

Proposer Release of Liability for References

The undersigned hereby fully and forever release, exonerate, discharge and covenant not to sue the City, its commissions and boards, officers and employees, and all individuals, entities and firms providing information, comments, or conclusions ("Reference Information") in response to inquiries that the City may make regarding the qualifications or experience of a Prime proposer, proposed joint venture partner, proposed subconsultant or proposed key/lead team member in connection with the selection process for **RM-1-2024-2** from and for any and all claims, causes of action, demands, damages, and any and all liabilities of any kind or description, in law, equity, or otherwise arising out of the provision of said Reference Information. This Release and Waiver is freely given and will be applicable whether or not the responses by said individuals, entities or firms are accurate or not, or made willfully or negligently.

Company Name

Signature of Authorized Representative of Company

Print Name and Title

Date

ATTACHMENT I: PROPOSER QUESTIONNAIRE AND REFERENCES

Part V. Proposer Certification of Truth, Accuracy, and Completeness

I certify that based on information and belief formed after reasonable inquiry, the statements and information contained in this document are true, accurate, and complete. Additionally, by submitting this bid/proposal, I attest that I have reviewed and accepted all terms found in this solicitation, any and all addenda issued to this solicitation, and City's contract terms.

Company Name

Signature of Authorized Representative of Company

Date

Print Name and Title

**ATTACHMENT II: CITY'S AGREEMENT
TERMS AND CONDITIONS**

The following document contains sample contract templates to be used as an introduction to common terms found in the City of San Francisco Professional Services template. The actual contract between the City and Contractor will differ and be tailored to fit the circumstances.

**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
[Insert name of contractor]
[Insert Department Contract ID, if any]
[Insert PeopleSoft Contract ID]**

This Agreement is made this [insert day] day of [insert month], [insert year], in the City and County of San Francisco (“City”), State of California, by and between [name of Contractor] (“Contractor”) and City.

Recitals

WHEREAS, the [name of department making purchase] (“Department”) wishes to procure [insert short description of the services City intends to buy] from Contractor; 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, Contractor was competitively selected pursuant to a Request for Qualifications (“RFQ”) entitled [enter RFQ name] issued through Sourcing Event ID [Enter Number] which resulted in a prequalified pool of suppliers from which Contractor was selected **Choose:** as the highest rank proposer in the prequalified pool or as the highest rank proposer after a solicitation by the Department to the prequalified pool or without a further solicitation to the prequalified pool because the Agreement will have a not-to-exceed amount that is less than or equal to the Minimum Competitive Amount as defined by Section 21.02 of the San Francisco Administrative Code; and

[LBE requirements waived] WHEREAS, this is a contract for Services and the Local Business Enterprise (“LBE”) subcontracting participation requirement for the Services has been waived pursuant to waiver CMD14BXXXXXXXX; and

☐ Civil Service or Prop J Approval: CSC approval is required for the labor component of an agreement. Review the [Civil Service and Prop J Requirements and Applicability Guidance](#) to determine if CSC approval is required. Then choose from the following options and delete the ones not used.

[Single Contract] WHEREAS, approval for the Agreement was obtained on [insert date of Civil Service Commission action or DHR approval date if under \$100K] from the [Civil Service Commission or Department of Human Resources on behalf of the Civil Service Commission] under PSC number [insert PSC number] in the amount of [insert Dollar Amount] for the period of [insert number of years]; and

[Multiple Contracts] WHEREAS, approval for the Agreement was obtained on [insert date of Civil Service Commission action or DHR approval date if under \$100K] from the [Civil Service Commission or Department of Human Resources on behalf of the Civil Service Commission] under PSC number [insert PSC number] which authorizes the award of multiple agreements, the total value of which cannot

exceed [insert dollar amount] and the individual duration of which cannot exceed [insert number of years]; and

[Exempt from PSC] WHEREAS, this Agreement is for _____ (as defined by the 2023 PSC Policy of the Civil Service Commission) and, as such, is exempt from Civil Service Commission review;

➔ **Ethics Form 126f2.** Review this document to see if award of this contract requires your department to submit Ethics Form 126f2: [Ethics Forms Requirements and Applicability](#). If the form is required, insert the following clause. Otherwise delete.

WHEREAS, the Department has filed Ethics Form 126f2 (Notice of Submission of Proposal) because this Agreement has a value of \$100,000 or more in a fiscal year and will require the approval of [Choose all that apply an elected officer of the City, a board on which an elected officer of the City serves, a state agency on whose board an elected officer of the City’s appointee serves, and/or the Board of Supervisors]; and

➔ **Ethics Form 126f4.** Review this document to see if award of this contract requires your department to submit Ethics Forms 126f4: [Ethics Forms Requirements and Applicability](#). If the form is required, insert the following clause. Otherwise delete.

WHEREAS, the Department has filed Ethics Form 126f4 (Notification of Contract Approval) because this Agreement has a value of \$100,000 or more in a fiscal year and will require the approval of [Choose all that apply an elected officer of the City, a board on which an elected officer of the City serves, a state agency on whose board an elected officer of the City’s appointee serves, and/or the Board of Supervisors]; and

WHEREAS, the City’s [Board of Supervisors] approved this Agreement by [insert resolution number] on [insert date of Commission or Board action] in the amount of [insert Dollar Amount] for the period commencing [Insert Start Date] and ending [Insert End Date]; and
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 specifically incorporated into this Agreement by reference as provided herein.

1.2 “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 [insert name of department].

1.3 “City Data” means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

1.4 “CMD” means the Contract Monitoring Division of the City.

1.5 “Confidential Information” means confidential City information including, but not limited to, personal identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (“Chapter 12M”). Confidential Information includes, without limitation, City Data.

1.6 “Contractor” means [insert name and address of contractor].

1.7 “Deliverables” means Contractor’s or its subcontractors’ work product, including any partially-completed work product and related materials, resulting from the Services 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.

1.8 “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.

1.9 “Party” and “Parties” means City and Contractor either individually or collectively.

1.10 “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 **Term.** The term of this Agreement shall commence on [insert Contractor’s start date] and expire on [insert expiration date], unless earlier terminated as otherwise provided herein.

2.2 **Options to Renew.** City has the option to renew the Agreement for a period of [enter number] (#) additional years. City may exercise this option at City’s sole and absolute discretion by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.” Extensions may be for the whole or partial period provided for above.

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions.

3.1.1 **Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of Section 3.105 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.

3.1.2 Maximum Costs. 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 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."

3.2 Authorization to Commence Work. Contractor shall not commence any work under this Agreement until City has issued formal written authorization to proceed, such as a purchase order, task order or notice to proceed. Such authorization may be for a partial or full scope of work.

3.3 Compensation.

3.3.1 Calculation of Charges and Contract Not to Exceed Amount. The amount of this Agreement shall not exceed [insert whole dollar amount in numbers and words], the breakdown of which appears in Appendix B, "Calculation of Charges." City shall not be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement.

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments until City approves the Services delivered. Payments to Contractor by City shall not excuse Contractor from its obligation to replace the unsatisfactory Services even if the unsatisfactory character was apparent or could have been detected at the time such payment was made. Non-conforming Services may be rejected by City and in such case must be replaced by Contractor without delay at no cost to City.

3.3.3 Withhold Payments. If Contractor fails to provide the Services in accordance with Contractor's obligations under this Agreement, City may withhold any and all payments due to 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 submitted by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the

PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.5 Reserved - LBE Payment and Utilization Tracking System.

3.3.6 Getting paid by City for Services.

(a) City utilizes a commercial product through its banking partner to pay City contractors electronically. Contractors shall sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [SF City Partner at sfgov.org](https://sfcitypartner.sfgov.org).

(b) At the option of City, Contractor may be required to submit invoices directly in the City's financial and procurement system. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information.

3.3.7 Reserved - Grant Funded Contracts.

3.3.8 Payment Terms.

(a) **Payment Due Date.** Unless City notifies the Contractor that a dispute exists, Payment shall be made within [Enter number of days, generally ≥ 30] calendar days, measured from (1) the rendering of the Services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date City issued a check to Contractor or, if Contractor agreed to electronic payment, the date City has posted electronic payment to Contractor.

(b) Reserved - Payment Discount Terms.

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make copies of 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 less 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 Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section.

3.6 Payment of Prevailing Wages.

3.6.1 Covered Services. Services to be performed by Contractor under this Agreement will involve the performance of work covered by [\[choose: the California Labor Code Sections 1720 and 1782, as incorporated within Section 6.22\(e\) of the San Francisco](#)

Administrative Code, or San Francisco Labor and Employment Code Article 102 (insert section)] (collectively, “Covered Services”), which is incorporated into this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

3.6.2 **Wage Rates.** The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations (“DIR”), as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Copies of the applicable prevailing wage rates are available from the City’s Office of Labor Standards and Enforcement (“OLSE”). See also <https://sf.gov/resource/2022/citywide-contractor-labor-laws>. Contractor agrees that it shall pay not less than the prevailing wage rates, as determined by the Board of Supervisors and DIR, to all workers employed by Contractor who perform Covered Services under this Agreement.

3.6.3 **Subcontract Requirements.** Contractor shall insert in every subcontract for the performance of Covered Services under this Agreement a provision requiring subcontractor to pay all persons performing labor in connection with Covered Services under the subcontract not less than the highest general prevailing rate of wages as determined by the Board of Supervisors and DIR for such labor and services.

3.6.4 **Posted Notices.** Contractor shall post job site notices [add if source of obligation is the CA Labor Code: prescribed by DIR] at all job sites where Covered Services are to be performed.

3.6.5 **Payroll Records.** Contractor shall keep or cause to be kept complete and accurate payroll records for all workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services, including apprentices, their classification, a general description of the Services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall perform any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by City and its authorized representatives and/or DIR.

3.6.6 **Certified Payrolls.** Contractor shall prepare certified payrolls for the period involved for all employees, including those of subcontractors, who performed Covered Services. [Add additional text if prevailing wages are required under the CA Labor Code: Contractor and each subcontractor performing Covered Services shall electronically submit certified payrolls to City and to DIR as specified by City and DIR. Contractor and all subcontractors that will perform Covered Services shall attend a training session on the preparation and electronic submission of certified payroll records provided by City. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to City.]

3.6.7 **Compliance Monitoring.** Covered Services performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by DIR and/or OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with DIR and/or OLSE and other City employees and agents

authorized to assist in the administration and enforcement of the prevailing wage requirements. Contractor agrees that (i) OLSE shall have the right to engage in random inspections of job sites and have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (ii) Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iii) Contractor shall prominently post at each job-site a sign informing employees that the project is subject to City's prevailing wage requirements and that these requirements are enforced by OLSE; and (iv) OLSE may audit such records of Contractor as it reasonably deems necessary. Failure to comply with these requirements may result in penalties and forfeitures pursuant to the California Labor Code, including Section 1776(g), as amended from time to time, San Francisco Administrative Code Section 6.22(e), and San Francisco Labor and Employment Code Article 102, as applicable.

3.6.8 **Remedies.** Should Contractor, or any subcontractor performing Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Agreement or subcontract for the Covered Services, the general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in Administrative Code Section 6.22(e) and/or California Labor Code Section 1775. City, when certifying any payment which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

Article 4 Services and Resources

4.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in **Appendix A, "Scope of Services."** Officers and employees of City are not authorized to request and City is not required to compensate for Services beyond those stated.

4.2 **Qualified Personnel.** Contractor represents and warrants that it is qualified to perform the Services required by City, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. 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 sufficient resources for timely completion within the project schedule.

4.3 **Subcontracting.** 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. **[Use the following sentence and list desired subcontractors if a specific contractor is required for services – otherwise omit:]** City's execution of this Agreement constitutes its approval of the subcontractors listed below and/or in appendices.

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

4.4.1 **Independent Contractor.** For the purposes of this Section 4.4, “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 is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required under this Agreement. Contractor, and its agents and employees will not represent or hold themselves out to be employees of City at any time. 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 is liable for its acts and omissions. 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 of its agents or employees. 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 is not performing in accordance with the requirements of this Section, 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 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 this Section 4.4 shall be solely limited to 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 hold 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. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred 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.

➔ **Service Warranties.** If the scope of services necessitates the inclusion of specific warranties, consider adding them in the below empty section.

4.6 **Reserved.**

4.7 **Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the Services are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the sum of **[insert whole dollar amount in words and numbers -- no pennies and no “.00”]** per calendar day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this Agreement was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor under this Agreement or any other contract between City and Contractor. Such deductions shall not be considered a penalty, but rather agreed upon monetary damages sustained by City because of Contractor’s failure to furnish deliverables to City within the time fixed or such extensions of time permitted in writing by City.

➔ **Performance Bond.** Performance Bond is a form of business insurance that can protect City in the event Contractor fails to perform. A performance bond is usually provided by a bank or an insurance company to make sure a contractor completes a project. Consult with your Deputy City Attorney to assist you in drafting this language. If not used, delete 4.8 caption and text and replace solely with **“Reserved.”** in bold.

4.8 **Performance Bond.** The Contractor is required to furnish a performance bond in a form acceptable to City, in a sum of not less than **[insert bonding level]** of the annual amount of the contract to guarantee the faithful performance of this contract. The bond must be approved as to sufficiency and qualifications of the surety by the Controller.

4.9 **Fidelity Bond.** Contractor shall maintain throughout the term of this Agreement, at no expense to City, a blanket fidelity bond or a blanket crime policy (Employee Dishonesty Coverage) covering all officers and employees in an amount of not less than **\$50,000** with any deductible not to exceed **\$5,000** and including City as additional obligee or loss payee as its interest may appear.

4.10 **Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver Services using all modes of transportation available. In addition, the Contractor shall charge fair and competitive prices for Services ordered during an emergency and not covered under the awarded 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) 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.

(b) 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.

(c) Workers’ Compensation Liability Insurance, in statutory amounts, with Employers’ Liability Limits not less than \$1,000,000 each accident, injury, or illness.

(d) Professional Liability Insurance, applicable to Contractor’s profession, with limits not less than \$1,000,000 for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Technology Errors and Omissions Liability Insurance, with limits of \$1,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of Services defined in this Agreement and shall also provide coverage for the following risks:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to City’s or third person’s computer, computer system, network, or similar computer-related property and the data, software, and programs thereon.

(f) Cyber and Privacy Liability Insurance with limits of not less than \$1,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

(g) Reserved

5.1.2 Additional Insured.

(a) The Commercial General Liability Insurance policy must include as Additional Insured the City and County of San Francisco, and its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must include as Additional Insured the City and County of San Francisco and its Officers, Agents, and Employees.

(c) Reserved.

5.1.3 **Waiver of Subrogation.** The Workers’ Compensation Liability Insurance policy(ies) shall include a waiver of subrogation in favor of City for all work performed by the Contractor, and its employees, agents and subcontractors.

5.1.4 **Primary Insurance.**

(a) The Commercial General Liability Insurance policy shall 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Reserved

5.1.5 **Other Insurance Requirements.**

(a) Thirty (30) days' advance written notice shall be provided to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to City address set forth in Section 11.1 entitled, "Notices to the Parties."

(b) 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, be maintained for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) 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.

(d) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance including additional insured and waiver of subrogation status, as required, 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.

(f) 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 and its officers, agents, and employees, and the Contractor as additional insureds and waive subrogation in favor of City, where required.

5.2 **Indemnification.**

5.2.1 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 liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, 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 personal 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; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are 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, experts, and related costs, and City's costs of investigating any claims against City.

5.2.2 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.

5.2.3 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.

5.2.4 Under no circumstances will City indemnify or hold harmless Contractor.

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 **Contractor to Pay All Taxes.** 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 City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to timely report on behalf of City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by City to enable City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

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 ("Notice of Termination"). The Notice of Termination shall specify the date on which termination of the Agreement shall become effective ("Termination Date").

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 affect the termination of this Agreement on the Termination Date and to minimize the liability of Contractor and City to third parties as a result of the termination. All such actions shall be

subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

- (a) Completing performance of any Services that City requires Contractor to complete prior to the Termination Date.
- (b) Halting the performance of all Services on and after the Termination Date.
- (c) Cancelling all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for materials, Services, equipment or other items.
- (d) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts cancelled. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the cancellation of such orders and subcontracts.
- (e) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the cancelled orders and subcontracts.
- (f) Taking such action as may be necessary, or as 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 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 provided prior to the Termination Date, for which City has not already made 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 and returning material or equipment delivered to City or otherwise disposed of as directed by City.
- (d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of such 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, except for those costs specifically listed 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 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	Article 13	Data and Security

(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 is not cured within ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(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, reorganization or arrangement, 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 Default Remedies. 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 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 in accordance with 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	8.2.2	Default Remedies
3.3.7(a)	Grant Funded Contracts – Disallowance	9.1	Ownership of Results
3.4	Audit and Inspection of Records	9.2	Works for Hire
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	Article 13	Data and Security

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, any partially-completed Deliverables, and related materials, shall become the property of and will be transmitted to City. Unless expressly authorized in writing by City, Contractor may not retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** All copyrights in Deliverables that are considered works for hire under Title 17 of the United States Code, shall be the property of City. If any such Deliverables are ever determined not to be works for hire under federal law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to 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 its subcontractors. With City's prior written approval, Contractor and its subcontractors may retain and use copies of such works for reference and as documentation of their respective experience and capabilities provided that any such use is in conformance with the confidentiality provisions of this Agreement.

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 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 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 **Consideration of Salary History.** Contractor shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or

“Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Article 141. Information about and the text of Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of Article 141, irrespective of the listing of obligations in this Section.

10.5 **Nondiscrimination Requirements.**

10.5.1 Nondiscrimination in Contracts. Contractor shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. 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 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 Labor and Employment Code Article 131.2.

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. Labor and Employment Code Article 111 applies to this Agreement. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

10.8 Health Care Accountability Ordinance. Labor and Employment Code Article 121 applies to this contract. Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Article 121.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

Information about and the text of Article 121, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.9 First Source Hiring Program. Contractor must comply with all of the applicable 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 its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves; (ii) a candidate for that City elective office; or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date City approves the contract. 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 ten percent (10%) in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Slavery Era Disclosure. Contractor shall comply with San Francisco Administrative Code Chapter 12Y, San Francisco Slavery Era Disclosure Ordinance, including but not limited to Contractor's affirmative duty to research and disclose evidence of Contractor, its parent or subsidiary entity, or its Predecessor Company's Participation in the Slave Trade or receipt of Profits from the Slave Trade. Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.

10.13 Working with Minors. Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Contractor, or any subcontractor, is providing services to City involving the supervision or discipline of minors or where Contractor, or any subcontractor, will be working with minors in an unaccompanied setting on more than an incidental or occasional basis, Contractor and any subcontractor shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for such positions and/or prohibiting employment of certain persons including but not limited to California Penal Code Section 290.95. In the event of a conflict between this Section and Section 10.14, “Consideration of Criminal History in Hiring and Employment Decisions,” of this Agreement, this Section shall control.

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 Article 142, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Labor and Employment Code (“Article 142”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, 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 Article 142.

10.14.2 The requirements of Article 142 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. Article 142 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 Nonprofit Contractor Requirements.

10.15.1 **Good Standing.** If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General’s Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City’s request, Contractor shall provide documentation demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General’s Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

10.15.2 **Public Access to Nonprofit Records and Meetings.** If Contractor is a nonprofit organization, provides Services that do not include services or benefits to City

employees (and/or to their family members, dependents, or their other designated beneficiaries), and receives a cumulative total per year of at least \$250,000 in City or City-administered funds, Contractor must comply with the City’s Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

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 Distribution of Beverages and Water.

10.17.1 Reserved. - Sugar-Sweetened Beverage Prohibition.

10.17.2 Reserved - Packaged Water Prohibition.

10.18 Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), 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.

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:	Name Title Agency Address Email Phone
To Contractor:	Name Title Company Address Email Phone

Any notice of default or data breach must be sent by **certified mail or other trackable written communication**, and also by e-mail, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least ten (10) days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Laws Requiring Access for People with Disabilities.

11.2.1 Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to people with disabilities.

Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

11.2.2 Contractor shall adhere to the requirements of (i) the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sec. 1201 et seq.), (ii) Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), (iii) Section 255 of the Communications Act Guidelines, (iv) the applicable Revised Section 508 Standards published by the U.S. Access Board (<https://www.access-board.gov/ict/>), and (v) the Web Content Accessibility Guidelines (WCAG) 2.1, Level AA, as amended from time to time. Contractor shall ensure that all information content and technology provided under this Agreement fully conforms to the applicable Revised 508 Standard, as amended from time to time, prior to delivery and before the City's final acceptance of the Services and/or Deliverables.

11.3 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

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 § 7920 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 by written instrument executed and approved in the same manner as this Agreement.

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. Disputes will not be subject to binding arbitration. 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 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 City until a written claim therefor has been presented to and rejected by 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.

11.6.3 **Health and Human Service Contract Dispute Resolution Procedure.** The Parties shall resolve disputes that have not been resolved administratively by other

departmental remedies in accordance with the Dispute Resolution Procedure set forth in Appendix [\[insert the appendix letter\]](#) incorporated herein by this reference.

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 including the appendices, 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 City’s Charter, codes, ordinances and duly adopted rules and regulations of 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 (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) 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. The Parties agree that this Agreement, including all appendices, sets forth the Parties’ complete agreement. If the Appendices to this Agreement include any standard printed terms from Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between City’s terms and Contractor’s printed terms attached, City’s terms in this Agreement shall take precedence, followed by the procurement issued by the department (if any), Contractor’s proposal, and Contractor’s printed terms, respectively. Any hyperlinked terms included in Contractor’s terms shall have no legal effect.

11.14 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests (“Legal Requests”) related to any City Data under this Agreement, and in no event later than twenty-four (24) hours after Contractor receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with City’s instruction and requests, including,

without limitation, any retention schedules and/or litigation hold orders provided by City to Contractor, independent of where City Data is stored.

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 Protection of Private Information. 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 City Data; Confidential Information. In the performance of Services, Contractor may have access to, or collect on City’s behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City’s behalf, 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 Payment Card Industry (“PCI”) Requirements. Contractors providing services and products that handle, transmit or store cardholder data, are subject to the following requirements:

13.2.1 Applications shall be compliant with the Payment Application Data Security Standard (PA-DSS) and validated by a Payment Application Qualified Security Assessor (PA-QSA). A Contractor whose application has achieved PA-DSS certification must then be listed on the PCI Councils list of PA-DSS approved and validated payment applications.

13.2.2 Gateway providers shall have appropriate Payment Card Industry Data Security Standards (PCI DSS) certification as service providers (<https://www.pcisecuritystandards.org/index.shtml>). Compliance with the PCI DSS shall be achieved through a third-party audit process. The Contractor shall comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs.

13.2.3 For any Contractor that processes PIN Debit Cards, payment card devices supplied by Contractor shall be validated against the PCI Council PIN Transaction Security (PTS) program.

13.2.4 For items 13.2.1 to 13.2.3 above, Contractor shall provide a letter from their qualified security assessor (QSA) affirming their compliance and current PCI or PTS compliance certificate.

13.2.5 Contractor shall be responsible for furnishing City with an updated PCI compliance certificate thirty (30) calendar days prior to its expiration.

13.2.6 **Bank Accounts.** Collections that represent funds belonging to City and County of San Francisco shall be deposited, without detour to a third party's bank account, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector.

13.3 **Business Associate Agreement.** This Agreement may require the exchange of information covered by the U.S. Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). A Business Associate Agreement ("BAA") executed by the Parties is attached as Appendix [\[insert the appendix letter\]](#).

13.4 **Management of City Data.**

13.4.1 **Use of City Data.** Contractor agrees to hold City Data received from, or created or collected on behalf of, City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

13.4.2 **Disposition of City Data.** Upon request of City or termination or expiration of this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all City Data given to, or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractor's environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

13.5 **Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to City Data and any derivative works of City Data is the exclusive property of City.

13.6 Loss or Unauthorized Access to City’s Data; Security Breach Notification.

Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any “Leak”) within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. **Contractor shall pay for the provision to the affected individuals of twenty-four (24) months of free credit monitoring services, if the Leak involved information of a nature reasonably necessitating such credit monitoring.** The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

Article 14 MacBride And Signature

14.1 MacBride Principles – Northern Ireland. The provisions of San Francisco Administrative Code Chapter 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 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

CONTRACTOR

Recommended by:

[company name]

[name]
[title]
[department]

[name of authorized representative]
[title]
[optional: address]
[optional: city, state, ZIP]

City Supplier Number: [Supplier Number]

Approved as to Form:

David Chiu
City Attorney

By: _____
[name of Deputy City Attorney]
Deputy City Attorney

Appendices

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

Appendix A Scope of Services

1. Description of Services

Contractor agrees to perform the following Services:

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 [insert name of department]. Format for the content of such reports shall be determined by the [insert name of department]. The timely submission of all reports is a necessary and material term and condition 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 provided for in this Agreement, Contractor's liaison with the [insert name of department] will be [insert name of contact person in department].

In drafting the Scope of Services, the following format may be helpful in drafting:

A. Project Background

B. Project Definitions

C. Project Deliverables

The Contractor shall provide each of the following deliverables in writing to the City for review and approval to achieve the project objectives.

C.1. <Title>

Deliverable 1

C.2 <Title>

Deliverable 2

C.3. <Title>

Deliverable 3

C.4 <Title>

Deliverable 4

**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.

In drafting the Calculation of Charges, the following format may be helpful in drafting:

Deliverable	Target Completion Dates	Cost
<Title>		
<u>Deliverable 1:</u>		
<Title>		
<u>Deliverable 2:</u>		
<Title>		
<u>Deliverable 3:</u>		
Total Cost		