



SAN FRANCISCO HEALTH SERVICE SYSTEM

Affordable, Quality Benefits & Well-Being

REQUEST FOR QUALIFICATIONS FOR HSS Drupal Website RFQ#HSS2017-1

CONTACT: Michael Visconti, michael.visconti@sfgov.org, (415) 554-1711

Background

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 (“the City”) established by Charter in 1850, 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 City seeks responses from firms demonstrating successful experience in **Drupal 8 custom solutions**. These services will be used to assist the **San Francisco Health Service System** with **designing, building and hosting a new website**. Respondents must have experience working with **Drupal 8 platform**, as described later in this document.

Intent of this Request for Qualification (RFQ)

It is the intent of the **San Francisco Health Service System** to select one or more contractors for the delivery of services exclusively outlined in this RFQ. Note that the City can accept responses only from firms pre-qualified in a specific Service Area according to the pre-qualified list created in July 2016 by the City’s Department of Technology as a result of RFQ #DT2016-01 (list can be found on - <http://sfgov.org/sfc/custom-drupal-faq>)

Subcontracting Requirement

The Local Business Enterprise (LBE) subconsulting goal for this Request For Qualifications (RFQ) and resulting contract(s) has been waived. However, the City strongly encourages responses from qualified LBEs. Pursuant to Admin Code Chapter 14B, rating bonuses will be in effect for any Proposers who are certified as a Small- or Micro-LBE.

Schedule*

RFQ Issued	02-15-2017
Deadline for RFQ Questions	03-22-2017 (2pm PT)
Deadline for RFQ Answers	03-29-2017
Deadline for RFQ Responses	04-12-2017 (2pm PT)
Notice of intent to award a contract	04-26-2017

*Dates are subject to change.

RFQ Questions and Communications

To ensure fair and equal access to information about this RFQ, e-mail your questions to **michael.visconti@sfgov.org**.

Questions must be in writing and received by the Deadline for RFQ Questions. No questions will be accepted after this time with the exception of City vendor requirement questions.

A summary of the questions and answers pertaining to this solicitation will be posted on the **San Francisco Health Service System website** (<http://myhss.org>).

1. Introduction

BACKGROUND

The **San Francisco Health Service System (SFHSS)** seeks responses from firms demonstrating successful experience in providing custom **Drupal 8** services in the following three (3) Service Areas.

- **Service Area 1: Custom Drupal theme design services** for creating a new look and feel for the HSS website (<http://myhss.org>).
- **Service Area 2: Custom Drupal development services** for configuring and building the functionality outlined in this scope of work for the HSS website.
- **Service Area 3: Custom Drupal hosting services** for providing hosting and support services for the HSS website.

The firm(s) selected to perform the above services under HSS RFQ#HSS2017-1 will redesign, rebuild and host the existing HSS website for a Drupal 8 content-management framework, in accordance with (i) the website strategy, design and engineering materials developed for HSS by Rolling Orange, Inc. in 2016 (the “2016 HSS Website Design Specifications”) and (ii) the HSS brand identity system style guidelines designed by Barretto-Co. LLC for HSS in 2016 (the “HSS Brand Guidelines”).

The new HSS website will serve as a highly accessible and usable portal for communicating health benefit and well-being information to, and interacting with, the diverse HSS member population, including employees of the City & County of San Francisco (CCSF), the San Francisco Unified School District, City College and the San Francisco Superior Court, retirees, and their dependents. This will include enabling HSS to have a more sophisticated social media presence.

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 services that may be required.

2.1 Service Area 1: Custom Drupal Theme Design Services

Firms pre-qualified for work in this Service Area are invited to respond. The scope of work for firms pre-qualified for Service Area 1 includes the delivery of the following services.

DELIVERABLE SET - DES.1 – DESIGN THEME

- Develop design templates that are both responsive (allowing for various types of pages such as multimedia galleries, libraries of legacy materials, blogs and social media) and consistent (e.g. location of the navigation bar, contact information, search tool, informational footer, button style), including banners, graphics and iconography required to complete webpages. [DES.1A]
- Develop design themes for the look and style of the website that reflect the HSS identity. The design theme must incorporate the font types, sizes, and color schemes defined in the HSS Brand Guidelines. [DES.1B]
- Develop wireframes to define standard layouts and navigation including element placement, information hierarchy based on existing sitemap, and interactivity of wireframe elements. [DES.1C]
- Develop a final visual design (using HSS Brand Guidelines as a baseline) for the website including all page template types and responsive views. [DES.1D]
- Develop a web framework prototype (*not* Photoshop or in addition to Photoshop) and complete no less than three (3) rounds of usability testing that accounts for HSS' diverse member population. [DES.1E]

The firm selected to perform the above services will utilize the overall site strategy and requirements including user personas and user stories of the 2016 HSS Website Design Specifications including, but not limited to, the HSS Website Strategy (Appendix A1), HSS Website Domain Model (Appendix A2), HSS Content Model (Appendix A3), HSS Website Redesign Technology Assessment (Appendix A4), HSS Website Redevelopment Site Map (Appendix A5), and HSS Website Redesign Inception Phase Summary Report (Appendix A6). The firm selected to perform the above services will strictly adhere to the HSS Brand Guidelines including all design standards and pattern styles (Appendix B).

The firm selected to perform the above services will adhere to the information architecture including content model and sitemap contained in the 2016 HSS Website Design Specifications (Appendix A3, Appendix A5).

Design templates and new website content information architecture must incorporate fully

Responsive Web Design thereby supporting easy navigation with multiple platforms, including mobile platforms, by fluidly adjusting the placement of elements on a page or screen to best fit the available space. These design templates will provide an ideal viewing experience to engage HSS stakeholders with a minimum of resizing, panning or scrolling across a wide range of devices. Design templates must adapt to different digital platforms, specifically:

- Desktop: Dated this far back and anything newer:
 - Windows Operating System (OS): Internet Explorer 9+, Google Chrome (latest version), Firefox (latest version).
 - Mac OS X El Capitan: Safari 7+, Google Chrome (latest version) and Firefox (latest version).
- Small Screen (mobile and tablet): Dated this far back and anything newer:
 - iOS: Mobile Safari 7+
 - Android: Chrome 4+ and Android Browser 4.0
 - Windows 10 Mobile

2.2 Service Area 2: Custom Drupal Development Services

Firms pre-qualified for work in this Service Area are invited to respond. The scope of work for firms pre-qualified for Service Area 2 includes the delivery of the following services.

DELIVERABLE SET - DEV.1 – DRUPAL SETUP

- Setup Drupal 8 core web content management system. [DEV.1A]
- Setup secure website and permissions for content contributors and site administrators. [DEV.1B]
- Develop fully responsive template based on design theme and specs provided. [DEV.1C]
- Develop site to be in compliance with security standards of the City and County of San Francisco (see <http://sfgov.org/policies>) and the Health and Human Services web standards, usability and accessibility guidelines (see <https://webstandards.hhs.gov/>). [DEV.1D]
- Import into new solution specified legacy content from existing HSS website (myhss.org) and allow for updating of existing content including, but not limited to, Member Rules, Open Enrollment materials, Key Contact Information, HSS Mission Statement and Core Values, Maps and Directions, eNews (current and archived), eNews Registration portal/portlet, Change of Address portal/portlet, Hotjar popup feature that reads “Please give HSS some feedback. What are you looking for at myhss.org?”, HSS Operations and Communications materials (including health benefits information, benefit guides, premium rates, enrollment forms, and analytics such as “most searched for terms” on myhss.org), Events (including member seminars, open enrollment events, and photo archives), Well-Being materials (multimedia, programs, events, services), Health Service Board materials (including minutes, attachments, meeting calendar, committees, and presentations), and HSS Finance materials (including annual reports, financial statements, membership demographics, and archives). [DEV.1E]

- Develop search functionality for both new and legacy content. [DEV.1F]
- Advise as to, and develop, applicable Drupal modules necessary to realize the Website Design (Service Area 1) such as Admin Menu, Toolbar Menu, CKEditor, Markdown, IMCE, Token, Pathauto, Plcture, Views, AKA Ctools, Quicktab, Colorbox, Focal Point, Disqus, Search, Custom Search, social media-related modules (Facebook, Instagram, LinkedIn, YouTube, Twitter block), media module(s) (such that files may be uploaded without requiring an FTP) and Calendar (for SFHSS Wellbeing and Operations, including, but not limited to, Open Enrollment [October], Flu Vaccination Clinics, and Well-being classes and events). [DEV.1G]
- Complete usability, performance and acceptance testing. [DEV.1H]
- Develop a form (to be filled by users/members) which can route, via email, to the HSS Salesforce instance configuration (in the government/SFgov cloud) and create a case, or submit directly to the HSS salesforce instance configuration (in government/SFgov cloud) to create a case. [DEV.1I]
- Develop/Set-up multiple accounts for internal HSS that can be tied to external email addresses (e.g. City Outlook/sfgov.org, gmail.com). [DEV.1J]

DELIVERABLE SET - DEV.2 – DRUPAL CUSTOM SUPPORT SERVICES

- Provide written documentation and in-person training services for HSS web developers, content contributors and content editors on how to continuously update the new website with content, Drupal best practices, and how to troubleshoot common errors (proposers will denote the number and frequency of in-person training sessions). [DEV.2A]
- Deliver user guide and training documentation [DEV.2B], including:
 - Comprehensive Operations Manual for Drupal Administration Duties
 - Detailed How-To User Guide for common content contributor/developer tasks
 - Complete Style Guide for all content
 - Detailed documentation of the build/rebuild to allow HSS web developers to maintain the code and content of the website successfully
- Provide HSS with digital communication assets including photos, graphics, and text in fully editable format. [DEV.2C]

DELIVERABLE SET - DEV.3 – DRUPAL POST IMPLEMENTATION SUPPORT SERVICES

- Provide post implementation of technical support for issue resolution on a retainer basis for ten (10) hours per month for the first six (6) months, and four (4) hours per month after six months (if unused, hours will roll-over month-to-month). [DEV.3A]
- Provide hourly pricing for any technical support and issue resolution requested by HSS in excess of the amounts listed above. [DEV.3B]
- Provide information and training on any Drupal updates that may impact the modification, updating, and public usage of myhss.org. [DEV.3C]

2.3 Service Area 3: Custom Drupal Hosting Services

Firms pre-qualified for work in this Service Area are invited to respond. The scope of work for firms pre-qualified for Service Area 3 includes the delivery of the following services.

DELIVERABLE SET - HST.1 – DRUPAL CUSTOM HOSTING SERVICES [HST.1]

- Setup Drupal web content management hosting environment to suit SFHSS custom requirements including the ability to add scripts.
- Setup a secure hosting environment able to provide protection against DDOS (Distributed Denial of Service) and other types of attacks.
- Allow for multiple add-on domains and facilitate additional domain names.
- Provide hosting renewal pricing for up to five (5) years.
- Provide three (3) month trial period for hosting services (there will be no charge to SFHSS or the City for cancellation during the trial period).
- Provide capability for various analytic reports including, but not limited to, hits, unique visitors, visited pages, GB transferred, and activity by date.
- Provide for transfer of SSL certificates.
- Provide MySQL or other open-source relational database management system (RDBMS).

DELIVERABLE SET - HST.2 – DRUPAL CUSTOM HOSTING SUPPORT SERVICES [HST.2]

- Provide on-going web hosting on a 24x7x365 basis and technical support, at minimum, Monday through Friday, 7AM to 6PM PT, up to 24x7x365 (vendor to describe its option(s)) for the HSS website.
- Support includes, but is not limited to, Drupal core, modules and LAMP stack application maintenance, security patches, software patches/updates, licensing and new browser support.
- Ensure server reliability and an uptime guarantee of >99.5%.
- Provide automatic nightly backup and disaster recovery options, including:
 - Provide HSS access to backup system
 - Backup/File retention policy
 - HSS ability to restore / self-perform site backup

3. Response Requirements

3.1 Time and Place for Submission of Responses

Responses and all related materials must be received by **2:00pm PT on Wednesday, April 12th, 2017**. Responses may be delivered to the following address:

*Michael Visconti
San Francisco Health Service System
1145 Market Street, Third Floor
San Francisco, CA 94103*

Postmarks will not be considered in judging the timeliness of submissions. Responses submitted by e-mail will not be accepted. Late submissions will not be considered, including those submitted late due to mail or delivery service failure.

3.2 Response Package

The following items must be included in your response and packaged in a box or envelope clearly marked **RFQ#HSS2017-1 HSS Website RFQ – SERVICE AREA [1, 2 and/or 3]**. Please note that **the City can accept responses only from firms pre-qualified in a specific Service Area according to the pre-qualified list created in July 2016 by City’s Department of Technology as a result of RFQ #DT2016-01 (list can be found on - <http://sfgov.org/sfc/custom-drupal-faq>)**

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. Marketing and sales type information should be excluded. All parts, pages, figures, and tables should be numbered and clearly labeled.

- A. **One (1) flash disk/drive or CD-ROM containing entire contents of response.** All files should be submitted in unprotected PDF or Word format. Electronic files should include signatures, where applicable.
- B. **Five (5) complete printed copies of RFQ Response.** The pages may be bound by a method of the Respondent’s choosing.

4. Evaluation Criteria

This section describes the guidelines used for analyzing and evaluating the responses and for Respondent pre-qualification. It is the City's intent to select Respondent(s) that provide the best overall qualifications to the City inclusive of fee considerations. 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 the responses received are inadequate to satisfy its needs.

4.1 Evaluation Team

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

4.2 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).

- A) **COMPLETE RESPONSE:** Respondent has submitted a response for delivering services and deliverables outlined in this RFQ for the RELEVANT SERVICE AREA for which it would like to be considered.
- B) **STAFFING:** The lead staff, including the Respondent's Project Manager and technical lead(s), proposed to be assigned to the City's project(s) must individually have had a similar lead role in both of the Prior Project Descriptions submitted for the RELEVANT SERVICE AREA.

4.3 Evaluation Criteria

Each RFQ response that meets the Minimum Qualifications will be evaluated in accordance with the criteria below.

4.3.1 Staff Qualifications – 20 points (assessed separately within each Service Area)

Qualifications and educational backgrounds of lead staff members, including subcontractor staff, if applicable, proposed to perform services for the City are appropriately demonstrated for the relevant Service Area indicated in response.

4.3.2 Vendor Experience – 30 points (assessed separately within each Service Area)

4.3.2.A - For Service Area 1 - Custom Design - Provide an overview of three (3) relevant projects and include design deliverables that show visually appealing, responsive and accessible website designs.

4.3.2.B - For Service Area 2 - Custom Development - Provide an overview of three (3) relevant projects and describe the process and solutions you used to build develop, test and deploy a responsive and accessible website.

4.3.2.C - For Service Area 3 - Custom Hosting - Provide an overview of three (3) relevant projects and describe the solution architecture and hosting solution you setup to deploy and support a collection of websites.

4.3.3 Completeness of Response Submission – 20 points (assessed separately within each Service Area)

- a) Response conforms with RFQ requirements and concisely but comprehensively addresses RFQ requirements.
- b) Response is professionally presented and contains organized content and format.

4.3.4 Fee Proposal – 30 points (assessed separately within each Service Area)

The City intends to award a contract to the respondent(s) that it considers will provide the best overall services. The City reserves the right to accept other than the lowest priced offer and to reject any and all proposals that are not responsive to this request. Please provide a fee proposal that breaks down cost by deliverable set within each relevant service area.

- a) Service Area 1: Custom Drupal Design Services (see Sec. 2.1)

DES.1	Design Theme	(total cost)
DES.1A	Responsive design template development	(itemized cost)
DES.1B	Design theme development	(itemized cost)
DES.1C	Wireframe development	(itemized cost)
DES.1D	Visual design development	(itemized cost)
DES.1E	Prototype and Usability Testing	(itemized cost)

- b) Service Area 2: Custom Drupal Development Services (see Sec. 2.2)

DEV.1	Drupal Setup	(total cost)
DEV.1A	Core CMS	(itemized cost)
DEV.1B	Secure website set-up	(itemized cost)
DEV.1C	Template development	(itemized cost)
DEV.1D	Security standards development	(itemized cost)
DEV.1E	Legacy content	(itemized cost)
DEV.1F	Search functionality development	(itemized cost)
DEV.1G	Calendar development	(itemized cost)
DEV.1H	Usability, performance, and acceptance testing	(itemized cost)
DEV.1I	Salesforce	(itemized cost)
DEV.1J	Account/Email Set-up	(itemized cost)

DEV.2	Drupal Custom Support Services	(total cost)
DEV.2A	Content training and documentation	(itemized cost)
DEV.2B	User guide, manual and related materials	(itemized cost)
DEV.2C	Digital communication assets	(itemized cost)

DEV.3	Drupal Post Implementation Support Services	(total cost)
DEV.3A	Post Implementation Support	(itemized cost)
DEV.3B	Post Implementation Support, additional	(\$/hour)

DEV.3C	Drupal update information and training	(itemized cost)
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c) Service Area 3: Custom Drupal Hosting Services (see Sec. 2.3)

HST.1	Drupal Custom Hosting Services	(total cost)
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HST.2	Drupal Custom Hosting Support Services	(total cost)
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4.4 Contractor Selection Processes

Selection Interviews

Following the Response Evaluation process, Respondents may be invited to interviews with the Evaluation Team following a review of Respondents submitted references, if necessary. Interviews, if pursued by the City, will consist of standard questions asked of selected Respondents, and specific questions regarding individual proposals.

The City has sole and absolute discretion over whether interviews will be conducted or not to select Respondents for contract negotiations.

Other Terms and Conditions

The selection of any Respondent(s) 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.

Respondents agree to become an approved city vendor within (10) days of award. Vendors can apply without having a SF City Vendor ID (see <http://sfgov.org/oca/qualify-do-business>).

Respondents agree to meet the applicable terms of the City-approved service contract (Appendix C). If a satisfactory contract cannot be negotiated in a reasonable time with the selected Respondent, then the City and HSS, in its sole discretion, may terminate negotiations and begin contract negotiations with any other remaining Respondents, or reissue a subsequent Request for Proposal (RFP), a Request for Quote, a Request for Qualifications, or a mini-RFP, or it may determine that the project will not be pursued.

HSS, 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. HSS must be notified in writing of any staff changes within five (5) business days. The City reserves the right at any time to approve, disapprove, or modify proposed project plans, timelines and deliverables.

Appendix A – 2016 HSS Website Design Specifications

The attached 2016 HSS Website Design Specifications were developed by Rolling Orange pursuant to the agreement with HSS dated June 1, 2016 [PSC file No. 0135-16-8].

A1. HSS Website Strategy (Appendix A1)

A2. HSS Website Domain Model (Appendix A2)

A3. HSS Content Model (Appendix A3)

A4. HSS Website Redesign Technology Assessment (Appendix A4)

A5. HSS Website Redevelopment Site Map (Appendix A5)

A6. HSS Website Redesign Inception Phase Summary Report (Appendix A6)

Appendix B – HSS Brand Guidelines

Please note that the attached HSS Brand Guidelines are as of December 2016 and may be subject to modification.

Appendix C – Agreement

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

[Vendor]

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

Recitals

WHEREAS, the [HSS] (“Department”) wishes to [design/build/host new HSS website]; and,

WHEREAS, a Request for Qualifications (“RFQ”) was issued on [date], and City selected Contractor pursuant to the RFQ; and

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

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 42585-15/16 on June 6, 2016;

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

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

1.2 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and “San Francisco Health Service System.”

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

1.4 "Contractor" or "Consultant" means [Vendor name and address].

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

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

1.7 "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.

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

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

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the latter of: (i) [Vendor start date]; or (ii) the Effective Date and expire on [expiration date], unless earlier terminated as otherwise provided herein.

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

Article 3 Financial Matters

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

3.3 **Compensation.**

3.3.1 **Payment.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the **Director of the San Francisco Health Service System**, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed \$####,### (insert whole dollar amount). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In no event shall City be liable for interest or late charges for any late payments.

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

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

3.3.4 **Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City to Contractor at the address specified in Section 11.1,

“Notices to the Parties,” or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.5 Reserved. (“LBE Payment and Utilization Tracking System”)

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

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

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

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

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the

City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

Article 4 Services and Resources

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

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

4.3 **Subcontracting.** 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.

[Please list subcontractors here, if they will be used to provide services to the City under this Agreement]

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

4.4.1 **Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as

creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

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

4.5 Assignment. The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.6 Warranty. Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at

the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

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 [##,###] 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.

Article 5 Insurance and Indemnity

5.1 Insurance.

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

- (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.
- (e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:
 - (i) 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;

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

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

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

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

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.3 All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

5.1.4 Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

5.1.6 Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

5.1.7 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

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

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

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

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

5.3 **Indemnification For Design Professionals.** To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury

(including, without limitation, injury to or death of an employee of the Contractor or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

5.3.1 **Limitations.** No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

5.3.1 **Copyright Infringement.** Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of Services. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

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

6.3 **Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

Article 7 Payment of Taxes

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

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

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

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

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

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

Article 8 Termination and Default

8.1 Termination for Convenience

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

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and

City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

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

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

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

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

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

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

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

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

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

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

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

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not

limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

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

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

8.2 Termination for Default; Remedies.

8.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

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

3.5	Submitting False Claims.	10.4	Nondisclosure of Private, Proprietary or Confidential Information
4.5	Assignment	10.10	Alcohol and Drug-Free Workplace
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes		

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

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

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

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

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

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

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

8.4 **Rights and Duties upon Termination or Expiration.**

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

3.3.2	Payment Limited to Satisfactory Services	9.2	Works for Hire
3.4	Audit and Inspection of Records	10.4	Nondisclosure of Private, Proprietary or Confidential Information
3.5	Submitting False Claims	11.6	Dispute Resolution Procedure
Article 5	Insurance and Indemnity	11.7	Agreement Made in California; Venue
6.1	Liability of City	11.8	Construction

6.3	Liability for Incidental and Consequential Damages	11.9	Entire Agreement
Article 7	Payment of Taxes	11.10	Compliance with Laws
8.1.6	Payment Obligation	11.11	Severability
9.1	Ownership of Results		

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

Article 9 Rights In Deliverables

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

9.2 **Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at www.sfgov.org under "Government."

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter;

Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

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

10.4 Nondisclosure of Private, Proprietary or Confidential Information.

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

10.4.2 In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

10.5 Nondiscrimination Requirements

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

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

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

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

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

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

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

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

10.12 **Reserved. (“Slavery Era Disclosure”)**

10.13 **Reserved. (“Working with Minors”)**

10.14 **Consideration of Criminal History in Hiring and Employment Decisions**

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

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

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

10.16 **Reserved (“Food Service Waste Reduction Requirements”).**

10.17 **Reserved (“Sugar-Sweetened Beverage Prohibition”).**

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

10.18.1 Contractor shall comply with San Francisco Environment Code Chapter 8, which provides that except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. Contractor is subject to the penalty and enforcement provisions of Chapter 8.

10.19 **Reserved. (“Preservative Treated Wood Products”)**

Article 11 General Provisions

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

To City:

To Contractor: **[insert name of Contractor contact person, mailing address, and e-mail address]**

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

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

11.3 **Reserved. (“Payment Card Industry (“PCI”) Requirements”)**

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

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

11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or

controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

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

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

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

11.10 Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.11 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

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

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFQ, and Contractor's proposal dated **[Date of Proposal]**. The RFQ and Contractor's proposal

are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFQ and the Contractor's proposal.

Article 12 MacBride And Signature

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

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

CITY

CONTRACTOR

Recommended by:

[Vendor name]

[SFHSS]
[SFHSS]
[SFHSS]

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

Approved as to Form:

City vendor number: [vendor number]

Dennis J. Herrera
City Attorney

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