



City and County of San Francisco

Port of San Francisco

Addendum #1 issued August 2, 2013

REQUEST FOR QUALIFICATIONS FOR AS-NEEDED ENVIRONMENTAL AND RELATED PROFESSIONAL SERVICES RFQ#PRT1213-07

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Overview

The Port of San Francisco ("Port"), a department of the City and County of San Francisco, is a self-supporting, public enterprise agency overseeing 7-1/2 miles of property along the San Francisco Bay.

This Request for Qualifications ("RFQ") is a solicitation for as-needed environmental and related professional services to augment Port staff resources to ensure environmental compliance on projects. It is the intent of the Port to enter into three (3) contracts with pre-qualified Respondents for services on an as-needed basis. The Port seeks Respondents with experience working with ports, municipalities, or similar government agencies on complex environmental programs. The Port strongly encourages City Contract Monitoring Division ("CMD") certified Local Business Enterprises ("LBEs") to submit Responses and will provide LBE prime Respondents with a ratings bonus in accordance with Attachment II.

Respondents must meet the Minimum Qualifications described in Attachment V, Section B, to be considered for evaluation.

Estimated Cost: \$3 million total for three contracts, each with a not-to-exceed amount of \$1 million.

Estimated Contract Term: The Port anticipates awarding three contracts to the three highest-scoring Respondents. Each contract awarded from this RFQ will have a three-year term with a one-year extension option. Actual contract periods may vary, depending upon service needs and contractor performance at the Port's sole discretion.

Local Business Enterprise Subcontracting:

The Local Business Enterprise ("LBE") subcontracting goal for this RFQ is 22% of all goods and services contracted under this RFQ.

Schedule*

RFQ Issued	07-16-2013
Pre-Response Conference	07-19-2013
RFQ Questions Deadline	07-26-2013 (12 pm PDT)
RFQ Answers and Clarifications Available Online	08-2-2013
Response Deadline	08-16-2013 (2 pm PDT)
Oral Interview Notification	August <u>September 16,</u> 2013
Interviews	August <u>September 25,</u> 2013
Notification of Intent to Award Contracts	September 2013
Contract(s) begin	October 2013

*Each date subject to change. Check [Office of Contract Administration website](#) for latest schedule.

RFQ Questions and Communications:

Interested parties are directed NOT to contact any employees or officials of the Port other than those specifically designated in this RFQ and its Attachments.

E-mail questions to:

sfport-contracts@sfport.com by the RFQ Questions Deadline. No questions will be accepted after the RFQ Questions Deadline with the exception of City vendor compliance questions.

Pre-Response Conference attendance is recommended. See RFQ Section 3 for more information.

ADDENDUM 1.

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<u>Revised Scope of Services</u>	<u>p.5</u>
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1. Background

1.1 Definitions

General terms used in this Request for Qualifications (“RFQ”) are defined as follows:

Contract Service Order, or “CSO” refers to a project-specific work assignment requested or authorized by the Port under the terms and conditions of the Master Agreement.

Contractor refers to any Respondent awarded a contract for services under this RFQ.

Contract Monitoring Division, or “CMD” refers to the oversight agency for the Local Business Enterprise Ordinance set forth in Chapter 14B of the San Francisco Administrative Code (the former San Francisco Human Rights Commission). See the City and County of San Francisco Office of Contract Administration website for “Ordinances That Affect Contracting” at <http://sfgsa.org/index.aspx?page=5199>.

Local Business Enterprise, or “LBE” refers to vendors certified by CMD. See the CMD website for a current list of certified LBE vendors at <http://www.sfgsa.org/index.aspx?page=5368>.

Master Agreement, Agreement, or Contract refers to a non-project specific, contract between the Port and Respondent or firm for as-needed services.

Pre-Qualification refers to the Port’s evaluation process described below, which will result in a “pool” of pre-qualified Respondents for contract negotiations.

Respondent refers to any firm, joint venture, and/or partnership submitting a Response to this RFQ. A Respondent may consist of a Prime Consultant who will serve as the prime contractor, if selected by the Port for pre-qualification and contract award, and any associated Sub-consultants.

Response refers to the Attachment V qualifications package submitted for this RFQ.

1.2 Statement of Need and Intent

The Port of San Francisco (“Port”) seeks Responses from firms interested in a contract to provide environmental and related professional services on an as-needed basis.

It is the intent of the Port to award separate contracts to the three highest-scoring Respondents for a diverse set of possible projects on an as-needed basis, each with a contract term of three years (with a one-year extension option). The Port will negotiate the specific scope of services, budget, deliverables, and timeline for each project it decides to pursue.

The Respondents awarded contracts from this RFQ will provide services to multiple Port divisions. These services are required to address the Port’s fluctuating needs when existing Port and City staff are unavailable to perform required environmental work or when highly specialized environmental expertise is required that current staff does not possess.

This RFQ is not directed at one specific project. Requested services may involve an entire project, several projects, and/or part of a project or for any project phase. There is no guarantee of a minimum amount of work or compensation for any of the Respondents selected for pre-qualification and contract award.

Based on the Port’s experience with prior as-needed environmental services contracts, several types of professional disciplines and work may be required. Contractors may be required to perform environmental studies and investigations; prepare reports and plans; develop cost estimates; negotiate with regulatory agencies; and perform field inspections for various types of regulatory and environmental issues.

To make its pre-qualification determination, the Port will evaluate Respondent qualifications, including prior project information, and other information, as described herein. Each Respondent should demonstrate its capabilities using Attachment V, Response Template.

The Port’s Contract Monitoring Division (CMD) Contract Compliance Officer has established a 22% LBE sub-consulting goal for each of these proposed contracts. To be eligible for contract award, each firm responding to the RFQ must commit to meeting the 22% sub-consulting goal.

1.3 Background

The Port previously awarded contracts for environmental and related professional services under an RFQ entitled, “As-Needed Environmental Services” in 2009. All prior Respondents to the 2009 RFQ, including those selected as Contractors, must submit responses in order to be considered eligible for pre-qualification and contract award under this RFQ.

The following table provides examples of projects awarded under Contract Service Orders (“CSOs”) in the past for the services described in this RFQ. Please note that these serve as examples only. Projects and services awarded under this RFQ may differ.

Table 1 - Previously Awarded Environmental Services CSOs

CSO Project Description	CSO Amount
Stormwater Group Monitoring FY2011-2012, State Industrial General Permit	\$47,288.00
Stormwater Annual Report & Compliance Services, State Municipal General Permit	\$7,500.00
Pier 27 Shed & Administration Bldg. Demolition Biological Monitoring (Bats & Birds)	\$26,584.05
America’s Cup Environmental Protection Plan Mitigation Monitoring Implementation	\$211,500.00
Pier 27 Cruise Terminal Environmental Protection Plan Mitigation Monitoring Implementation	\$23,500.00
Stormwater Group Monitoring FY2012-2013, State Industrial General Permit	\$47,422.00
Stormwater Compliance Review Services (Inspections, Plan, & Report review)	\$65,563.15
Mission Bay Shoreline Bivalve Survey & Report	\$7,021.00
Mission Bay Shoreline Protection, Permitting, and Technical Support	\$26,859.00
Pier 27 Cruise Terminal Stormwater Control Plan	\$42,188.22
Pier 50 Storage Shed Soil Characterization, Article 22A Compliance (Maher Ordinance)	\$20,330.97

Pier 27 Demolition Oversight	\$51,748.00
Heron's Head Park Improvements, Project Dust Monitoring	\$21,120.00
Brannan Street Wharf, Biological Monitoring (Marine Mammal, Fish, & Birds)	\$139,796.00
Pier 29 Shed Fire Restoration Abatement Oversight	\$32,616.00
Pier 80 UST Closure Services, Soil and Groundwater Investigation	\$199,823.00
Bayview Gateway, Article 22A Compliance (Maher Ordinance)	\$40,000.00
Pier 43 Bay Trail Link Project, Migratory Bird Treaty Act Support (Permitting)	\$31,805.33
Mission Bay Shoreline Bayfront Park Migratory Bird Treaty Act Support (Permitting)	\$75,541.11
Pier 90 Environmental Oversight Support (Document Review)	\$12,981.00
Wharf J10 Environmental Oversight Support (Document Review, Regulatory Agency Coordination)	\$9,600.00
Potrero Power Plant/Pier 70 Environmental Oversight Support (Document Review, Regulatory Agency Coordination)	\$10,980.00
America's Cup Construction Stormwater Compliance Services	\$120,000.00
Average CSO Amount	\$55,294.21

2. Scope of Work

2.1 General Information

The Port describes the intended scope of work below as a general guide to the expected types of work. However, this description is not a complete listing of all services that may be required or desired.

Each Respondent should demonstrate its capabilities to perform the scope of work by using **Attachment V, Response Template** with particular focus on the *Minimum Qualifications stated in Section B therein*. Respondents that do not meet or exceed the Minimum Qualifications will not be evaluated or eligible for pre-qualification and contract award.

After completing the evaluation process and ranking all Respondents, the Port will negotiate the specific scope of services, budget, deliverables, and timeline with pre-qualified Respondents selected for contract negotiations. There is no guarantee of a contract award, minimum amount of work, or compensation for any Respondent(s) selected for contract negotiations.

The selected Contractor(s) will be expected to provide effective program management and timely submission of deliverables and invoices to the Port. The Contractor(s) must ensure that it is able to manage all contract communication and administrative responsibilities promptly and effectively. The Port will evaluate the Contractor's performance levels throughout the contract duration to assure that these performance levels are maintained.

2.2 Program Goals

The purpose of the program for as-needed services described in this RFQ is to ensure compliance with federal, state and local environmental protection regulations, and to reduce risk of hazards to human health and the environment.

2.3 Program Scope

Due to the nature of as-needed services, the Port cannot define specific scopes of work for the contracts in advance. The Port anticipates the need for the following types of work and disciplines as part of this program. The Port does not guarantee that any or all of the following categories or services will be required; this table serves only as a guide.

Table 2 – Anticipated Types of Work under this RFQ

Major Categories	Minor Categories
Environmental Engineering	Environmental Information Management Systems & Database Development
Site Investigation	Biological Surveys & Monitoring
Site Remediation Planning & Design	Risk Assessment & Risk Management
Construction & Remediation Site Environmental Inspection (Mitigation Monitoring & Reporting Program Compliance)	Hazardous Materials & Solid Waste Management
Environmental Planning & Permitting	
Storm Water Management	
Industrial Hygiene Services	
Climate Change Planning	

Contractors may be required to perform studies and investigations, prepare plans, specifications and cost estimates, write reports, and perform field inspections for various types of regulatory, environmental, and health and safety issues. For example, Contractors may expect their contract services to include the following types of work:

- **Environmental Characterization and Compliance** Materials testing to characterize for purposes of protecting human health and the environment and to determine proper handling, storage, treatment, and disposal procedures. This includes but is not limited to evaluation of: soil, sediment, storm water, surface and groundwater, air, noise, and aquatic and terrestrial biological resources. Tasks may include site assessments; risk assessment and management; feasibility studies; data evaluation and management; remediation and monitoring; and environmental audits. Applicable laws and regulations include but are not limited to: California Health and Safety Code, California Code of Regulations Title 22, San Francisco Health Code Article 22A, Toxic Substances Control Act, and Resource Conservation and Recovery Act.
- **Environmental Review, Permitting, and Permit Compliance** including: permit negotiations, filing applications, compliance program implementation, training, tracking and reporting, regulatory risk evaluation, developing compliance policies and protocols, sampling and analysis of discharges to waters of the State, storm water program management, compliance with Bay Area Air Quality Management District and California Air Resources Board programs, mitigation monitoring, operations, construction and remediation site environmental inspection. Regulatory authorities include, but are not limited to: the San Francisco Planning Department, U.S. Army Corps of Engineers, Regional Water Quality Control Board, U.S. Fish and Wildlife Service, California Department of Fish and Game, Bay Area Air Quality Management District, San Francisco Department of Public Health and the Bay Conservation and Development Commission.
- **Hazardous Materials, Hazardous Waste, and Solid Waste Management** including: materials and waste storage, use, transport, lawful disposal and manifesting; ~~creating and implementing operations plans~~; underground storage tank management, evaluation of health and safety concerns, training, and identifying permit requirements.
- **Industrial Hygiene Services** including lead and asbestos surveys, work plan development, and third-party oversight work.
- **Geographic Information Systems/Information Management Systems** support for environmental applications including: document control, development, analysis and

maintenance of spatial data including data acquisition from field and remote methods; creation and implementation of spatial databases, including integration with existing databases and systems; development of web-based mapping tools and creation of maps and other figures.

- **Climate Change** assessment including: greenhouse gas and carbon footprint evaluation, sea level rise vulnerability and preparedness, development of adaptive plans and strategies, including feasibility analysis and funding strategies.

2.4 Additional As-Needed Services

Subject to the Port's approval, the contract(s) awarded under this RFQ may be amended in accordance with City requirements to include other as-needed services related to the scope of work described in this RFQ. The specific scope and cost of as-needed services will be determined and negotiated by the Port.

2.5 Firm Fixed Price with a Per-Unit Cost Payment Structure

The Port intends to negotiate and award contracts based upon firm, fixed-hourly rates (unit cost) for professional staff as detailed in Attachment V in the Program Cost Estimate section. Respondents should be prepared to submit separate fee proposals that meet this expectation and requirement.

3. Pre-Response Conference

3.1 Pre-Response Conference Attendance. The Port will conduct a conference prior to the submittal deadline, and recommends attendance by all firms interested in responding to this RFQ.

3.2 Pre-Response Conference Objectives. At the Pre-Response Conference, the Port will provide an overview of submission requirements, collect and answer questions about the RFQ, and provide a networking opportunity for potential Respondents interested in prime contractor and subcontractor partnerships.

3.3 RFQ Questions Deadline

Upon conclusion of the Pre-Response Conference, **questions or requests for interpretation** will only be accepted by e-mail to sfport-contracts@sfport.com until the RFQ Questions Deadline. The contact persons designated in this RFQ and its Attachments will continue to receive and answer Respondent-specific questions about compliance with the City's vendor requirements past the RFQ Questions Deadline.

3.4 Pre-Response Conference Location and Time

Friday, July 19, 2013, 10:30 a.m.
Bayside Conference Room
Port of San Francisco

Pier 1, San Francisco, CA 94111

This location is accessible by BART (Embarcadero) and a number of MUNI routes.

3.5 Pre-Response Questions and Answers Summary

~~A summary of the substantive information discussed at the Pre-Response Conference, and~~ RFQ questions and answers will be posted on the Port of San Francisco's website at www.sfport.com

4. Response Submission Requirements

4.1 Time and Place for Submission of Responses

To be considered, Responses and all related materials must be received by the Response Deadline. Responses must be delivered to the Andrés Acevedo, Port of San Francisco, Pier 1, San Francisco, CA 94111.

Postmarks will not be considered in judging the timeliness of submissions. Responses submitted by e-mail or fax will not be accepted. Late submissions will not be considered, including those submitted late due to mail or delivery service failure. Note that Respondents hand-delivering Responses to the Port may be required to open and make packages accessible for examination by security staff.

4.2 Response Package

Use Attachment V, Response Template for your Response. Responses should provide a straightforward, concise description of the Respondent's capabilities to satisfy the requirements of the RFQ. Failure to abide by the requirements cited in the RFQ may result in delays and subsequent disqualification for contract award.

The following items must be included in your Response Package, clearly marked **RFQ# PRT1213-07 and As-Needed Environmental and Related Professional Services**. All sections, pages, and other contents should be numbered and clearly labeled.

All documents must be submitted on recycled paper (30% or higher) and must be printed on double-sided pages (San Francisco Environment Code Sec. 506 (h)).

A. Original printed Response (with original signatures) labeled as "Original"

Attachment I Acknowledgement of RFQ Terms and Conditions

Attachment II CMD Local Business Enterprise Forms (in a separate sealed envelope marked "CMD Forms")

Attachment III City's Administrative Requirements

Attachment IV City's Agreement Terms and Conditions

Attachment V Response Template

B. One (1) CD-ROM containing entire contents of Response Package, including all Attachments except the Proposed Fee Schedule. The CD-ROM and each of the electronic files on the CD-ROM must be labeled with the Respondent's name. All files should be submitted in *unprotected PDF or Word format*.

C. Seven (7) complete, printed copies of Attachment V in 3-ring binders, including any sample reports or other attachments except the Proposed Fee Schedule. Respondents are advised to review Attachments I through IV before beginning work on the Response Template in Attachment V to ensure they can meet the City's requirements.

D. One (1) printed copy of the Proposed Fee Schedule in a separate sealed envelope. To ensure that pricing information is not inadvertently lost or mishandled, the envelope containing the Proposed Fee Schedule should be packaged with the Response Package (i.e., the Proposed Fee Schedule should not be transmitted or delivered separately from the rest of your Response Package). The sealed envelope containing the Proposed Fee Schedule should be labeled with the RFQ# PRT1213-07 and Respondent's name.

5. Evaluation Criteria

This section describes the criteria that will be used for analyzing and evaluating the Responses. The selection of any Respondent for pre-qualification or subsequent contract negotiations does not guarantee a contract. This RFQ does not in any way limit the Port's right to solicit contracts for similar or identical services if, in the Port's sole and absolute discretion, it determines the Responses are inadequate to satisfy its needs.

5.1 Minimum Qualifications

Any Response that does not demonstrate that the Respondent meets the Minimum Qualifications stated in Attachment V, Section B, by the Response deadline will be considered non-responsive and will not be evaluated or eligible for award of any subsequent contract(s).

5.2 Evaluation Process Overview

Responses that satisfy the Minimum Qualifications referenced above will be evaluated. The Port will appoint an Evaluation Panel responsible for evaluating and scoring Responses based upon the evaluation criteria described in the table below and process described in Section 5.3 of this RFQ. Thereafter, the Port staff will make a recommendation for contract awards to the Port Commission.

Table 3 - Written Submittal and Oral Interview Evaluation and Scoring Criteria

Evaluation Criteria	Points	
	Written Submittal	Oral Interview
As-Needed/Technical Approach and Commitment to Cost Effective and Accountable Contracting Processes (Attachment V, Section E)	30	25
<ul style="list-style-type: none"> Understanding of the nature and implementation of As-Needed Professional Services Contracts required of the Port; Approach to addressing and completing the tasks to be assigned on an as-needed basis; Project Management capability and understanding of as-needed Contract Administration; and Demonstrated ability to work with the public agency owner as a team; including other consultants hired to represent the owner. Demonstrated commitment to cost effective and accountable contracting processes. 		
Prime Consultant and Team Experience (Attachment V, Section C)	20	20
<ul style="list-style-type: none"> Expertise of the Consultant/Team in the fields necessary to complete the tasks listed in this RFQ; Experience and results with similar professional services contracts involving the nature of work anticipated under this RFQ; and Demonstrated capability to complete deliverables within the agreed budget and timeline. 		
Assigned Project Staff (Attachment V, Section D)	20	20
<ul style="list-style-type: none"> Relevant experience of staff assigned to the type of work anticipated in the RFQ; Professional qualifications; Availability of assigned staff; and Demonstrated capability in producing cost-effective project results. 		
Organization (Attachment V, Section D)	30	30
<ul style="list-style-type: none"> Current workload and resources; Capacity and flexibility to complete high quality work in a timely manner; Ability to perform on short notice and manage multiple disciplines; and Presentation, clarity, organization of submittal, and responsiveness to project approach submittal requirements. Depth of available subconsultant resources in each specified discipline and commitment to the contract. 		
References		5
TOTAL POINTS	100	100

5.3 Evaluation Process and Selection for Contract Negotiations

Respondents must score at or above 70 points of the 100 possible points for their written Responses to qualify for an oral interview. The Port intends to “short list” and select no more than six (6) of the highest scoring Respondents for reference checks and for interviews with the Evaluation Panel.

Each Respondent should ensure that its Key Personnel and lead staff of proposed subcontractors to be assigned to the Program are prepared to attend the interview. For this purpose, "Key Personnel" refers to the proposed Project Manager and/or the proposed point of contact responsible for managing project resources, budget, timeline, deliverables and completion.

The Evaluation Panel will interview, evaluate, and score selected firms using a standardized set of questions and references evaluations. Using the criteria provided in Section 5.2, the panel will score on a 100 point scale. The Port intends to select the three (3) Respondents with the

highest oral interview scores to enter into contract negotiations for Master Agreements. The written proposal and oral interview scoring and selection process are summarized as follows:

Table 4 – Written Proposal and Oral Interview Scoring and Selection Process

Written Response Evaluation Phase Maximum Score	Oral Interview Evaluation Phase Maximum Score
Qualifications: 100 points	Interview: 100 points
The six (6) highest scoring Respondents (scoring a minimum of 70 points) will advance to interviews.	The three (3) highest scoring Respondents from the Oral Interview will be recommended for contract award.

Port Staff will check references of Respondents to evaluate and verify the quality of staffing provided to prior clients, adherence to schedules/budgets, problem-solving capabilities, project management capabilities, and the quality of deliverables and outcomes and will convey results of the reference check to the Evaluation Panel for review and scoring. Please see Attachment I, Section 14, Release of Liability.

5.4 Additional Selection Terms and Conditions

The selection of any Respondent for contract negotiations shall not imply acceptance by the Port of all terms of the Response, which may be subject to further negotiation and approvals. If a satisfactory contract cannot be negotiated in a reasonable time with the selected Respondent, then the Port, in its sole discretion, may terminate negotiations. The Port reserves the right at any time to approve, disapprove, or modify proposed plans, timelines and deliverables, provided that all modifications are within the scope of services sought by this RFQ.

If the selected Respondent fails to deliver the goods, services, or deliverables in accordance with the negotiated contract and the negotiated contract timeline or if the selected Respondent fails to meet the City’s acceptance criteria stated in the negotiated contract during the initial term of the contract, the Port reserves the right to terminate the contract.

5.5 As-Needed Contracting Approach

After completion of the selection process and negotiation of Master Agreement/s, the Port will use project-specific Contract Service Orders (“CSOs”) to formalize work scopes and fee proposals for the services under the resulting contracts. Respondents who have been awarded as-needed contracts may be asked to respond to requests for quotes, requests for proposals, or other competitive processes for specific scopes of work to ensure that Port receives the best value. After funds for the CSO have been certified by the City Controller’s Office, the Port will issue a Notice to Proceed (“NTP”) to authorize the start of work. The Port will authorize payment of services for specific CSOs issued on a firm, fixed-hourly unit-cost basis for professional staff and negotiated rates for reimbursable expenses.

Fee increases will be considered and approved by the Port in writing via CSO amendment, in the Port’s sole and absolute discretion, if the Port determines that they resulted from (1) Port-initiated changes in scope; or (2) Materially different conditions that were unforeseeable. The Port will evaluate other fee increase requests on a case-by-case basis.

6. Protest Procedures

The Port reserves the right to proceed with its Contractor selection and/or negotiations process during any protest period. The Port will cease its Contractor selection process only if and when it receives a notification of decision that is in favor of the protester.

6.1 Protest of Non-Responsiveness Determination

Within five (5) working days of the Port's issuance of a notice of non-responsiveness, any Respondent that believes the Port has incorrectly determined that its Response is non-responsive may submit a written notice of protest by mail or e-mail (fax is not acceptable). Such notice of protest must be received by the Port on or before the fifth (5th) working day following the Port's issuance of the notice of non-responsiveness. 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 Port to determine the validity of the protest.

6.2 Protest of Contract Award

Within five (5) working days of the Port's issuance of a notice of intent to award a contract under this RFQ, any Respondent that believes the Port has incorrectly selected another Respondent for contract award may submit a written notice of protest by mail or e-mail (fax is not acceptable). Such notice of protest must be received by the Port on or before the fifth (5th) working day after the Port's issuance of the notice of intent to award a contract.

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 Port to determine the validity of the protest.

6.3 Delivery of Protests

All protests must be received by the Port on or before the due date. If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the Port received the protest.

Protests or notice of protests made orally (e.g., by telephone) or by fax will not be considered. Protests must be delivered to:

Andrés Acevedo
Port of San Francisco
Pier 1
San Francisco, CA 94111
sfport-contracts@sfport.com

RFP/RFQ ATTACHMENT I: ACKNOWLEDGEMENT OF RFP/RFQ TERMS AND CONDITIONS

HOW TO RESPOND TO THIS ATTACHMENT

By submitting a Proposal/Response, the Proposer/Respondent, on behalf of itself and its Partners/Subcontractors acknowledges and agrees that:

1. **PROPOSER/RESPONDENT AUTHORIZATION:** The signatories are authorized by the Proposer/Respondent to make representations for the Proposer/Respondent and to obligate the Proposer/Respondent to perform the commitments contained in its proposal/response.
2. **PROPOSER/RESPONDENT SELECTION:** Based on proposals/responses received to this Request for Proposals/Request for Qualifications (RFP/RFQ), the Port intends to select the three highest-scoring responsive Proposer/Respondent for contract negotiations. This RFP/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 proposals/responses received are inadequate to satisfy its needs.
3. **CONTRACT NEGOTIATIONS:** The City will select the three highest scoring Proposer/Respondent(s) with whom the Port staff will commence contract negotiations. If satisfactory contracts cannot be negotiated in a reasonable time with the selected Proposers/Respondents, then the Port, in its sole discretion, may terminate negotiations and begin contract negotiations with the next highest-scoring Proposer/Respondent. The selection of any Proposer/Respondent for contract negotiation shall not imply acceptance by the City of all terms of the proposal/response, which may be subject to further negotiation and approvals before the City may be legally bound thereby.
4. **NO GUARANTEE OF WORK OR COMPENSATION:** There is no guarantee of a minimal amount of work or compensation for any of the Proposers/Respondents selected for contract negotiations.
5. **COMPLIANCE WITH LAWS AND REGULATIONS:** Proposers/Respondents must comply with all applicable State, Federal, and local laws. In the event any governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship or performance of the items offered on this proposal/response prior to their delivery, it shall be the responsibility of the successful Proposer/Respondent to notify the City at once, indicating in their letter the specific regulation which required such alterations. The City reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.
6. **STAFFING:** The key individuals listed and identified in the proposal/response will be performing the work and will not be substituted with other personnel or reassigned to another project by the Proposer/Respondent/Contractor without the City's prior approval or request. The City, in its sole discretion, shall have the right to review and approve all staff assigned to provide services throughout the duration of the contracts negotiated under this RFP/RFQ. Such approval by the City will not be unreasonably withheld. If selected for interviews, the Proposer's/Respondent's key individuals, including partner/subcontractor representatives, will be required to meet with the City prior to selection for contract negotiations.
7. **LEAD ROLE:** The selected Proposer/Respondent(s) will be expected to take the lead role in project management and staff coordination. Proposals/responses should factor this assumption into pricing.
8. **LBE SUBCONTRACTING GOAL:** The requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE ordinance" shall apply to this RFQ. See Attachment II for further details.

The Local Business Enterprise (LBE) Subcontracting goal is twenty two percent (22%) for this RFQ. All requirements of the Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance") shall apply to this RFP/RFQ.

RFP/RFQ ATTACHMENT I: ACKNOWLEDGEMENT OF RFP/RFQ TERMS AND CONDITIONS

For contracts advertised on or after July 1, 2013, prime contractors and all subcontractors who are awarded contracts as a result of the bid process are required to use the Elation secure web-based Local Business Enterprise Utilization Tracking System (LBEUTS) to submit payment information including invoices and other related information. The Contract Monitoring Division (CMD) will use this information to monitor compliance with the 14B LBE Ordinance.

9. CITY'S APPROVAL RIGHTS OVER SUBCONTRACTORS AND SUBCONTRACTOR PAYMENTS: The City has approval rights over the use of all subcontractors. Proposers/Respondents must identify all subcontractors in their proposal/response and these subcontractors must conform to all City policies regarding subcontractors. Furthermore, each Proposer/Respondent understands, acknowledges, and agrees that if it subcontracts with a third party for services, the Proposer/Respondent accepts responsibility for full and prompt payment to the third party. Any dispute between the Proposer/Respondent and the third party, including any payment dispute, will be promptly remedied by the Proposer/Respondent. Failure to promptly remedy or to make prompt payment to a third party (subcontractor) may result in the withholding of funds from the Proposer/Respondent by the City.

10. CITY RESOURCES: The City will arrange for contractor's access to equipment and data as deemed appropriate by the City.

11. ADMINISTRATIVE REQUIREMENTS: see *Attachment III*. Proposer/Respondent must fulfill the City's administrative requirements for doing business with the City prior to contract award. Fulfillment is defined as completion, submission and approval by applicable City agencies of the forms and requirements referenced in Attachment III.

12. THE CITY'S TERMS AND CONDITIONS: see *Attachment IV*. Proposer/Respondent is willing and able to meet all of the City's terms and conditions as stated in the City's standard professional services agreement ("Agreement") template (see *Attachment IV*). Proposers/Respondents wishing to negotiate modification of other terms and conditions must attach a copy of the City's Agreement referring to the specific portion of the Agreement to be changed, and show proposed changes (deleted sections with a strikeover and added sections in boldface type). The City's selection of any Proposer/Respondent who proposes changes to the City's Agreement terms shall not be deemed as acceptance of the Proposer's/Respondent's proposed changes.

13. TERM OF WORK EFFORT ESTIMATE: Submission of a proposal/response signifies that the proposed services are valid for ~~two~~three years from the City's notice of intent to award a contract from this RFP/RFQ and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

14. RELEASE OF LIABILITY: The Proposer/Respondent hereby fully and forever releases, discharges, and covenants not to sue, the City and the Port of San Francisco, their Commissions, Boards, officers and employees, and any third parties who furnish information concerning Proposer's/Respondent's performance on prior projects, of and for any and all claims, causes of action, damage, and any other liabilities of any kind or description, in law or equity, or otherwise, related to information or comments furnished to the City or Port about Proposer's/Respondent's performance on any other project or contract which Proposer/Respondent relies upon as experience to qualify or compete for this RFP/RFQ,

Furthermore, the Proposer/Respondent agrees to hereby waive all rights and benefits which it now has or in the future may have under California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.

15. FINANCIAL RESPONSIBILITY FOR PROPOSAL/RESPONSE COSTS: The City accepts no financial responsibility for any costs incurred by a firm in responding to this RFP/RFQ.

RFP/RFQ ATTACHMENT I: ACKNOWLEDGEMENT OF RFP/RFQ TERMS AND CONDITIONS

Proposals/responses will become the property of the City and may be used by the City in any way deemed appropriate.

16. PROJECT TIMELINE: Actual contract periods may vary, depending upon service and project needs. Any Proposer/Respondent selected for a contract must be available to commence work no later than October 2013. This RFP/RFQ provides the City with the ability to exercise options allowing for a total contract period of up to 4 years. It will be the responsibility of any Proposer/Respondent selected for contract negotiations to disclose, before negotiations commence, any limitations that may impact its ability to complete work in accordance with anticipated deliverables and timelines.

17. OBJECTIONS TO RFP/RFQ TERMS: Should a Proposer/Respondent object on any ground to any provision or legal requirement set forth in this RFP/RFQ, the Proposer/Respondent must, not more than ten (10) calendar days after the RFP/RFQ is issued, provide written notice to the Port setting forth with specificity the grounds for the objection. The failure of a Proposer/Respondent to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

18. EXCEPTIONS TO THIS RFP/RFQ: Proposers/Respondents must provide all information requested in this RFP/RFQ. Proposers/Respondents may clearly identify any exceptions to the RFP/RFQ in this section and must provide a written explanation of the exceptions, the ramifications of the exceptions for the City, and the description of the advantages or disadvantages to the City as a result of exceptions. The City, in its sole discretion, may reject any exceptions or specifications within the proposal/response that deviate from the RFP/RFQ requirements. Proposers/Respondents may also provide supplemental information, if necessary, to assist the City in analyzing proposals/responses.

19. ERRORS AND OMISSIONS IN RFP/RFQ: Proposers/Respondents are responsible for reviewing all portions of this RFP/RFQ. Proposers/Respondents are to promptly notify the Port, in writing, if the Proposer/Respondent discovers any ambiguity, discrepancy, omission or other error in the RFP/RFQ. Any such notification should be directed to the Port promptly after discovery, but in no event later than five (5) working days prior to the date for receipt of proposals/responses. Modifications and clarifications will be made by addenda as provided below.

20. INQUIRIES AND COMMUNICATIONS REGARDING RFP/RFQ: Inquiries regarding the RFP/RFQ and all communications including notifications related to, exceptions or objections to, or of an intent to request written modification or clarification of, the RFP/RFQ must be directed by mail or e-mail (fax is not acceptable) to:

Andres Acevedo
Port of San Francisco
Pier 1
San Francisco, CA 94111
sfport-contracts@sfport.com

21. CHANGE NOTICES: The Port may modify the RFP/RFQ, prior to the proposal/response due date, by issuing written addenda. Addenda will be posted on the 'Contract Opportunities' section of the Port website at: www.sfport.com. The Port will make reasonable efforts to post notification of modifications in a timely manner. Notwithstanding this provision, the Proposer/Respondent shall be responsible for ensuring that its proposal/response reflects any and all addenda issued by the Port prior to the proposal/response due date regardless of when the proposal/response is submitted. Therefore, the City recommends that the Proposer/Respondent call the Port or check the Port website before submitting its proposal/response to determine if the Proposer/Respondent is aware of all addenda.

22. REVISION OF PROPOSAL/RESPONSE: Proposer/Respondent may revise a proposal/response on the Proposer's/Respondent's own initiative at any time before the deadline for proposals/responses. The Proposer/Respondent must submit the revised proposal/response in the same manner as the original. A revised proposal/response must be received on or before the proposal/response due date.

RFP/RFQ ATTACHMENT I: ACKNOWLEDGEMENT OF RFP/RFQ TERMS AND CONDITIONS

23. CONFLICTS OF INTEREST: The successful Proposer/Respondent will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The successful Proposer/Respondent will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the successful Proposer/Respondent might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful Proposer/Respondent that the City has selected the Proposer/Respondent.

PROPOSERS/RESPONDENTS ARE STRONGLY ADVISED TO CONSULT WITH THEIR LEGAL COUNSEL REGARDING THEIR ELIGIBILITY TO SUBMIT A PROPOSAL/RESPONSE FOR THIS RFP/RFQ OR SUBSEQUENT RFPs/RFQs.

24. PROPOSER'S/RESPONDENT'S OBLIGATIONS UNDER THE CAMPAIGN REFORM ORDINANCE: Proposers/Respondents must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

If a Proposer/Respondent is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the Proposer/Respondent is prohibited from making contributions to:

- the officer's re-election campaign
- a candidate for that officer's office
- a committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (i) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (ii) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Qualifications or Proposals, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

- a) Criminal. Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.

RFP/RFQ ATTACHMENT I: ACKNOWLEDGEMENT OF RFP/RFQ TERMS AND CONDITIONS

- b) Civil. Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
- c) Administrative. Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, Proposers/Respondents should contact the San Francisco Ethics Commission at (415) 581-2300.

25. HEALTH CARE ACCOUNTABILITY ORDINANCE: The successful Proposer/Respondent will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at www.sfgov.org/olse/hcao.

26. SUNSHINE ORDINANCE: In accordance with San Francisco Administrative Code §67.24(e), contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person 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 or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

Proposer/Respondent understands that any writing presented in response to this RFP/RFQ may be subject to public disclosure under the foregoing provision.

27. PUBLIC ACCESS TO MEETINGS AND RECORDS: If a Proposer/Respondent is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the Proposer/Respondent must comply with Chapter 12L. The Proposer/Respondent must include in its proposal/response (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Proposer's/Respondent's meetings and records, and (2) a summary of all complaints concerning the Proposer's/Respondent's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the Proposers/Respondents shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in Proposer's/Respondent's Chapter 12L submission shall be grounds for rejection of the proposal/response and/or termination of any subsequent Agreement reached on the basis of the proposal/response.

28. RESERVATIONS OF RIGHTS BY THE CITY: The issuance of this RFP/RFQ does not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right at any time to:

- A. Waive or correct any defect or informality in any proposal, response, or response procedure;
- B. Reject any or all proposals/responses;
- C. Reissue a Request for Qualifications or Request for Proposals;
- D. Prior to submission deadline for proposals/responses, modify all or any portion of the selection procedures, including deadlines for accepting proposals/responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP/RFQ, or the requirements for contents or format of the proposals/responses;
- E. Procure any materials, equipment or services specified in this RFP/RFQ by any other means; or
- F. Determine that no project will be pursued.

29. NO WAIVER: No waiver by the City of any provision of this RFP/RFQ shall be implied from any failure by the City to recognize or take action on account of any failure by a Proposer/Respondent to observe any provision of this RFP/RFQ. Failure by the Department to object to an error, omission or

RFP/RFQ ATTACHMENT I: ACKNOWLEDGEMENT OF RFP/RFQ TERMS AND CONDITIONS

deviation in the proposal/response in no way will modify the RFP/RFQ or excuse the Proposer/Respondent from full compliance with the specifications of the RFP/RFQ or any contract awarded pursuant to the RFP/RFQ.

30. **CONTRACT NEGOTIATIONS:** The City will select the most qualified and responsive Proposer/Respondent with whom the Port staff will commence contract negotiations. If a satisfactory contract cannot be negotiated in a reasonable time with the selected Proposer/Respondent, then the Port in its sole discretion, may terminate negotiations and begin contract negotiations with the next highest scoring Proposers/Respondents it deems qualified. The selection of any Proposer/Respondent for contract negotiation shall not imply acceptance by the City of all terms of the proposal/response, which may be subject to further negotiation and approvals before the City may be legally bound thereby.

31. **CERTIFICATION:** Each Proposer/Respondent hereby certifies that it has carefully examined this RFP/RFQ and documents attached hereto for terms, conditions, specifications, covenants, requirements, services, etc. and the Proposer/Respondent certifies that it understands the scope of services requested, that the Proposer/Respondent has knowledge and expertise to provide the services submitted for consideration, and that its proposal/response is based upon the terms, conditions, specifications, services, and requirements of this RFP/RFQ and attachments. By its signature on the proposal/response to the RFP/RFQ, the Proposer/Respondent certifies that its proposal/response is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal/response for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud, so that all proposals/responses to this RFQ will result from free, open and competitive proposing among all Proposers/Respondents, in compliance with the City's laws.

32. **ACCEPTANCE:** Submission of any proposal/response indicates a Proposer's/Respondent's acceptance of the conditions contained in this RFP/RFQ unless clearly and specifically noted otherwise in the proposal/response. The City may discontinue its selection, contract negotiations, or contract award processes with any Proposer/Respondent if it is determined that the Proposer/Respondent has not accepted the RFP/RFQ terms and conditions contained herein.

RFP/RFQ ATTACHMENT I: ACKNOWLEDGEMENT OF RFP/RFQ TERMS AND CONDITIONS

Each Proposer/Respondent, as part of its proposal/response, must submit this document signed by a representative(s) authorized by the Proposer/Respondent to make representations for the Proposer/Respondent and to obligate the Proposer/Respondent to perform the commitments contained in its proposal/response.

Acknowledged and Agreed:

Signature

Printed Name

Title

Firm Name

City, State

Phone Number

Date

Signature

Printed Name

Title

Firm Name

City, State

Phone Number

Date

RFP/RFQ ATTACHMENT II: Local Business Enterprise (LBE) Forms

Contract Monitoring Division (“CMD”) Contact

If you have any questions concerning the CMD Forms and to ensure that your proposal/response is not rejected for failing to comply with these requirements, please contact **Finbarr Jewell, the Port’s Contract Compliance Officer at (415) 274-0511 or by e-mail at finbarr.jewell@sfgov.org.**

HOW TO RESPOND TO THIS ATTACHMENT

Each solicitation process requires a **new submittal of CMD Attachment 2 forms** at the following link:

<http://sfgsa.org/modules/showdocument.aspx?documentid=10460>

Local Business Enterprise Goals and Outreach

The requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”) shall apply to this RFP.

LBE Subconsultant Participation Goals

There is a twenty two percent (22%) goal for Local Business Enterprise subcontracting participation for this RFP/RFQ or resulting contract(s). Please submit **Forms 2A, 2B, 3 and 5** (and Form 4 if Joint Venture proposal/response) with your Proposal/Response Package. The forms should be part of the “Original” of your proposal/response (your proposal/response copies do not need to include these forms). The forms should have original signatures.

(2A) Form 2A-CMD Contract Participation Form

(2B) Form 2B-CMD Good Faith Outreach Form

(3) Form 3-CMD Non-Discrimination Affidavit

(4) Form 4-CMD Joint Venture Form (if applicable)

(5) Form 5-CMD Employment Form

If these forms are not returned with the proposal/response, the proposal/response may be determined to be non-responsive and may be rejected.

Each firm responding to this solicitation shall demonstrate in its response that it has used good-faith outreach to select LBE subcontractors as set forth in S.F. Administrative Code §§14B.8 and 14B.9, and shall identify the particular LBE subcontractors solicited and selected to be used in performing the contract. For each LBE identified as a subcontractor, the proposal/response must specify the value of the participation as a percentage of the total value of the goods and/or services to be procured, the type of work to be performed, and such information as may reasonably be required to determine the responsiveness of the proposal. LBEs identified as subcontractors must be certified with the San Francisco Contract Monitoring Division at the time the proposal is submitted, and must be contacted by the proposer (prime contractor) prior to

RFP/RFQ ATTACHMENT II: Local Business Enterprise (LBE) Forms

listing them as subcontractors in the proposal. Any proposal that does not meet the requirements of this paragraph will be non-responsive.

In addition to demonstrating that it will achieve the level of subconsulting participation required by the contract, a proposer shall also undertake and document in its submittal the good faith efforts required by Chapter 14B.8(C)&(D) and HRC Attachment 2, Requirements for Architecture, Engineering and Professional Services Contracts.

Proposals/Responses which fail to comply with the material requirements of S.F. Administrative Code §§14B.8 and 14B.9, CMD Attachment 2 and this RFP will be deemed non-responsive and will be rejected. During the term of the contract, any failure to comply with the level of LBE subcontractor participation specified in the contract shall be deemed a material breach of contract. Subconsulting goals can only be met with CMD-certified LBEs located in San Francisco.

All teams are required to use the LBE Utilization Tracking System (LBEUTS) to submit 14B Prime and sub information, including progress payment invoices. The LBEUTS system replaces CMD payment Forms 7 & 9.

LBE Subcontractor Participation and LBE Rating Bonuses

The City strongly encourages proposals/responses from qualified LBEs. Pursuant to Chapter 14B of the S.F. Administrative Code, the following rating bonus will be in effect for the award of the contracts to any Proposers/Respondents who are certified by CMD as an LBE, or joint ventures where the joint venture partners are in the same discipline and have the specific levels of participation as identified below. Certification applications may be obtained by calling CMD at (415) 581-2319. The rating bonus applies at each phase of the selection process. The application of the rating bonus is as follows:

- (1) A 10% bonus to an LBE; or a joint venture between or among LBEs; or
- (2) A 5% bonus to a joint venture with LBE participation that equals or exceeds 35%, but is under 40%;
- (3) A 7.5% bonus to a joint venture with LBE participation that equals or exceeds 40%;
- (4) A 10% bonus to a certified non-profit entity; or
- (5) A 2.0% rating bonus will be applied to any proposal/response from an SBA-LBE, except that the 2.0% rating bonus shall not be applied at any state if it would adversely affect a Small or Micro-LBE Proposer/Respondent or a joint venture with LBE participation.

Joint Venture Rating Bonuses - If applying for a rating bonus as a joint venture: The LBE must be an active partner in the joint venture and perform work, manage the job and take financial risks in proportion to the required level of participation stated in the proposal/response, and must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the LBE joint venture's work shall be set forth in detail separately from the work to be performed by the non-LBE joint venture partner. The LBE joint venture's portion of the contract must be assigned a commercially useful function. The joint venture partners must be of the same or similar discipline in order to be eligible for a rating bonus. The joint venture partners will be jointly responsible for the overall project management, control and compliance with Chapter 14B requirements.

RFP/RFQ ATTACHMENT III: CITY'S ADMINISTRATIVE REQUIREMENTS (LINKS TO FORMS)

- The City can only do business with Contractors that have fulfilled the City's requirements.
- The City highly recommends that Proposers/Respondents at the time of proposal/response submission fulfill the administrative requirements for doing business with the City.
- Fulfillment of the City's administrative requirements is defined as completion, submission to the Controller's Office and approval by applicable City agencies (Human Rights Commission, Treasurer/Tax Collector, Office of Contract Administration, Risk Management, etc.) of these forms.
- If you wish to complete and submit the vendor requirements outlined in Attachment III in advance of your proposal/response, please send all of these forms directly to the Contact below. The Contact will inform your firm if it needs to complete documentation requirements directly with an agency.
- **There are no City vendor compliance forms that are currently required for subcontractors as part of the RFQ response process. Please review RFQ Attachment IV P-500 to determine the subcontractor requirements that may apply as part of contract award, such as insurance coverage. Other subcontractor requirements should be incorporated by selected prime Contractors into their own agreements with subcontractors and/or monitored by the prime Contractor for subcontractor compliance.**

HOW TO RESPOND TO THIS ATTACHMENT

NEW TO CITY BUSINESS?

If your firm has never done business with the City before, please review and complete the forms referenced and linked in this Attachment, and submit them with your proposal/response.

Completion and submission of the vendor requirements outlined in Attachment III as soon as possible and in advance of your proposal/response to the Contact listed below is recommended but not required to prevent delays to the overall project timeline. The City cannot do business with any vendor that by contract award, fails to meet all requirements. Even if your firm is selected for contract negotiations and completes the scope of work portion of negotiations, the City cannot execute a contract and begin work if there are outstanding compliance requirements such as the City's Equal Benefits ordinance, the City's business tax requirements or the City's insurance requirements. We attempt to prevent those types of delays by providing as much advance notice of vendor requirements as possible.

NOT YOUR FIRST TIME DOING BUSINESS WITH THE CITY?

Even if your firm has done business with the City before, it is best to check on the status of your completion of the City's requirements with the Contact listed below to ensure your firm is not precluded from contract award based on outstanding administrative requirement issues. The City vendor number you list in the RFP/RFQ Attachment V Executive Summary section serves as partial verification that the Proposer or Respondent has completed the City's administrative requirements. Please be sure that your firm has fulfilled all City requirements as defined in the third bullet point above.

CONTACT

Contact Andrés Acevedo at 415-274-0443 or at Andres.Acevedo@sfport.com for information and assistance on meeting these requirements.

RFP/RFQ ATTACHMENT III: CITY'S ADMINISTRATIVE REQUIREMENTS (LINKS TO FORMS)

FORMS AND REQUIREMENTS

Vendor Profile Package Website:

<http://sfgsa.org/index.aspx?page=376>

A. **Vendor Profile Application** – establishes basic vendor information

<http://sfgsa.org/Modules/ShowDocument.aspx?documentid=806>

Vendor Profile Application Instructions and Commodity Codes for reference in filling out Application are available on Vendor Profile Package Website

<http://sfgsa.org/index.aspx?page=376>

Both JV Partner Respondents should have a completed vendor profile.

B. **IRS Form W-9** – Establishes federal and state tax status

Link is available on Vendor Profile Package Website.

Or use direct link to IRS website: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>

C. **Business Tax Declaration** – Establishes San Francisco business tax status

<http://sfgsa.org/Modules/ShowDocument.aspx?documentid=814> (Word)

<http://sfgsa.org/Modules/ShowDocument.aspx?documentid=816> (PDF)

Note that based on how this declaration is filled out, firm may be required to additionally register for a business tax certificate and pay business taxes. See instructions on the Declaration form. If your company must register, download and complete a business registration form available at this website to obtain a Business Registration Certificate

<http://www.sftreasurer.org/index.aspx?page=22>

D. **CMD Form 12B-101 (Declaration: Nondiscrimination in Contracts and Benefits)** – Establishes determination of how firm provides benefits to employees with spouses and to employees with domestic partners.

<http://sfgsa.org/modules/showdocument.aspx?documentid=10257>

Note that this form and documentation of benefits should be discussed directly with the Human Rights Commission, as the determining authority. Please contact the Human Rights Commission at 415-252-2500 for assistance.

E. **Minimum Compensation Ordinance Declaration**

<http://sfgsa.org/modules/showdocument.aspx?documentid=7581>

More information: <http://sfgsa.org/index.aspx?page=403>

F. **Health Care Accountability Ordinance Declaration**

<http://sfgsa.org/Modules/ShowDocument.aspx?documentid=8044>

More information: <http://sfgsa.org/index.aspx?page=407>

RFP/RFQ ATTACHMENT III: CITY'S ADMINISTRATIVE REQUIREMENTS (LINKS TO FORMS)

G. Insurance

Fulfillment of the City's insurance requirements is **not required as part of your proposal/response/response**. However, fulfillment prior to contract award is required.

Please see Section 15, Insurance of RFP/RFQ Attachment IV and consult with your broker on your ability to meet the requirements specified therein.

RFP/RFQ ATTACHMENT IV: CITY'S AGREEMENT TERMS AND CONDITIONS

Proposer/Respondent, if selected for contract negotiations, will be required to enter into contract(s) substantially in the form of the City and County of San Francisco's standard Professional Services Agreement (P-500), as attached for reference. (See pages 3 through 28 of this Attachment IV.) **There is no need to sign the signature page of the attached Agreement (P-500) as part of your response/proposal;** the signature process will occur after contract negotiations have concluded.

HOW TO RESPOND TO THIS ATTACHMENT

Does the Proposer/Respondent wish to negotiate modification of the City's terms and conditions?

- If Yes, attach modifications.
- If No, submit a statement that your firm accepts all of the City's terms and conditions as part of the "Original" of your response/proposal (your other response/proposal copies do not need to include this statement).

Proposers/Respondents wishing to negotiate modification of other terms and conditions must attach a copy of the City's Agreement referring to the specific portion of the Agreement to be changed, and show proposed changes (deleted sections with a ~~striketrough~~ and added sections in boldface type). The proposed changes need to be included in the "Original" of your response/proposal (your other response/proposal copies do not need to include this Attachment).

The City's selection of any Proposer/Respondent who proposes changes to the City's Agreement terms shall not imply acceptance of the Proposer's/Respondent's proposed changes.

Failure to timely execute the Professional Services Agreement (the contract), or to furnish any and all certificates, bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. In that case, the City, in its sole discretion, may select another firm.

Proposers/Respondents are urged to pay special attention to the requirements of applicable conflict of interest laws (§23 in the Agreement), Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits (§34 in the Agreement), the Minimum Compensation Ordinance (§43 in the Agreement), the Health Care Accountability Ordinance (§44 in the Agreement), and the First Source Hiring Program (§45 in the Agreement), as set forth herein.

Nondiscrimination in Contracts and Benefits

The successful Proposer/Respondent will be required to agree to comply fully with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. Chapter 12C requires nondiscrimination in contracts in

RFP/RFQ ATTACHMENT IV: CITY'S AGREEMENT TERMS AND CONDITIONS

public accommodation. Additional information on Chapters 12B and 12C is available on the CMD's website at: <http://sfgsa.org/index.aspx?page=5365>.

Minimum Compensation Ordinance (MCO)

The successful Proposer/Respondent will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements. For the contractual requirements of the MCO, see §43 Requiring Minimum Compensation for Covered in the Agreement.

For the amount of hourly gross compensation currently required under the MCO, see www.sfgov.org/olse/mco. Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract.

Additional information regarding the MCO is available on the web at www.sfgov.org/olse/mco.

Health Care Accountability Ordinance (HCAO)

The successful Proposer/Respondent will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at www.sfgov.org/olse/hcao.

First Source Hiring Program (FSHP)

The First Source Hiring Program is Chapter 83 of the Admin. Code, and it applies to: (a) entry-level positions for work performed by a contractor in the City; (b) entry-level positions for work performed on the contract in Alameda, San Francisco or San Mateo counties; (c) entry-level positions for work performed on the contract on property owned by the City; and (d) entry-level positions for work done under a permit authorization on a development project in the City. For more information, call the First Source Hiring Administrator at 401-4960.]

If the contract is for more than \$50,000, then the First Source Hiring Program (Admin. Code Chapter 83) may apply. Generally, this ordinance requires contractors to notify the First Source Hiring Program of available entry-level jobs and provide the Workforce Development System with the first opportunity to refer qualified individuals for employment.

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at <http://www.workforcedevelopmentsf.org/> and from the First Source Hiring Administrator, (415) 701-4883.

Conflict of Interest

The successful Proposer/Respondent will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and

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Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The successful Proposer/Respondent will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the successful Proposer/Respondent might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful Proposer/Respondent that the City has selected the Proposer/Respondent.

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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

[Name of Contractor- TBD]

This Agreement is made this [day - TBD] day of [month - TBD], 2013, in the City and County of San Francisco, State of California, by and between: [name of Contractor - TBD], hereinafter referred to as "Contractor," whose principal place of business is located at _____, and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the City and County of San Francisco ("City") through its Port of San Francisco ("Department" or "Port") wishes to obtain as-needed environmental and related professional services; and,

WHEREAS, a Request for Proposals or Request for Qualifications ("RFP/RFQ") was issued in July 2013 and City selected Contractor as the highest scoring firm or qualified firm pursuant to the RFP/RFQ; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number PSC number [XXXX-XX] on [DATE];

Now, THEREFORE, the parties agree as follows:

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.

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- 2. Term of the Agreement.** Subject to Section 1, the term of this Agreement shall be from [beginning date – TBD] to [termination date – TBD].
- 3. Effective Date of Agreement.** This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.
- 4. Services Contractor Agrees to Perform.** The Contractor agrees to perform the services provided for in Appendix A, "Services to be Provided by Contractor," attached hereto and incorporated by reference as though fully set forth herein.
- 5. Compensation.** Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the Controller, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed [dollar amount- TBD]. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Controller's Office as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.
- 6. Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.
- 7. Payment; Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."
- 8. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or

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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.

9. Left blank by agreement of the parties. (Disallowance)

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands 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:

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;

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.

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.

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.

11. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship 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.

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12. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** 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 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.

b. **Payment of 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, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a

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reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

a. 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:

- 1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; (with Jones Act and U.S. Harbor Workers Act) coverage for applicable project work; and
- 2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- 3) 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.
- 4) 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 professional services to be provided under this Agreement.
- 5) Contractor's Pollution Liability Insurance: Contractor's Pollution Liability Insurance, with minimum limits of \$2,000,000

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

- 1) Name as Additional Insured the City and County of San Francisco, the Port of San Francisco, and their Officers, Agents, and Employees. To satisfy this requirement, Contractor shall submit an additional insured endorsement in the form of ISO 2010 (11 85) or its equivalent.
- 2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

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e. 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.

f. 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.

g. 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.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

16. Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising 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 in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the sole 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

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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 in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

18. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 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.

19. Left blank by agreement of the parties. (Liquidated damages)

20. Default; Remedies

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

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

- | | |
|---|---------------------------------------|
| 8. Submitting False Claims; Monetary Penalties. | 37. Drug-free workplace policy |
| 10. Taxes | 53. Compliance with laws |
| 15. Insurance | 55. Supervision of minors |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment | 58. Graffiti removal |

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

3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any

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substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

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

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

c. 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.

21. Termination for Convenience

a. 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.

b. Upon receipt of the notice, 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:

- 1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- 2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- 3) Terminating all existing orders and subcontracts.
- 4) 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

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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.

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

6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

7) 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.

c. 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:

1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work 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 or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

3) 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.

4) 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.

d. 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 the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on 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 such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy

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or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

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

22. Rights and Duties upon Termination or Expiration

This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

- | | |
|---|---|
| 8. Submitting false claims | 24. Proprietary or confidential information of City |
| 9. Disallowance | 26. Ownership of Results |
| 10. Taxes | 27. Works for Hire |
| 11. Payment does not imply acceptance of work | 28. Audit and Inspection of Records |
| 13. Responsibility for equipment | 48. Modification of Agreement. |
| 14. Independent Contractor; Payment of Taxes and Other Expenses | 49. Administrative Remedy for Agreement Interpretation. |
| 15. Insurance | 50. Agreement Made in California; Venue |
| 16. Indemnification | 51. Construction |
| 17. Incidental and Consequential Damages | 52. Entire Agreement |
| 18. Liability of City | 56. Severability |
| | 57. Protection of private information |

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and 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. This subsection shall survive termination of this Agreement.

23. Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in

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performance of 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 data.

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

To City: City and County of San Francisco
 [DEPT ADDRESS]

To Contractor: **[Name of contractor, mailing address, and e-mail address – TBD]**

Any notice of default must be sent by registered mail.

26. Ownership of Results. Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire. If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, 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 are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. 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 work under this Agreement. 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 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 conferred upon City by this Section.

29. Subcontracting. Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

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30. Assignment. The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. 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.

32. Earned Income Credit (EIC) Forms. Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Local Business Enterprise Utilization; Liquidated Damages {Comment: It would be helpful to know if, and to what extent, the LBE Ordinance will apply}

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

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prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

Compliance and Enforcement. If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

34. Nondiscrimination; Penalties

a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, 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 bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been

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registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

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

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

37. Drug-Free Workplace Policy. Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation. Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act. 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 the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and

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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.

40. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person 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 or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records. If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions. Through execution of 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. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that 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. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

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43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in

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Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

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

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees

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

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

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

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

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

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Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

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

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

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

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

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

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

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

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

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference.

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement.

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring

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agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and

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property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

6) Set the term of the requirements.

7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages.

Contractor agrees:

1) To be liable to the City for liquidated damages as provided in this section;

2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry

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level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

(a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts.

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City

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contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic. Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of 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. Contractor shall cooperate with Department to submit to the Director of HRC 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% (HRC Contract Modification Form).

49. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. 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.

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

52. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48, "Modification of Agreement."

53. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances 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.

54. 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

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Contractor, will be paid unless the provider received advance written approval from the City Attorney.

55. Left blank by agreement of the parties. (Supervision of minors)

56. 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.

57. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

58. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

RFP/RFQ ATTACHMENT IV: CITY'S AGREEMENT TERMS AND CONDITIONS

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements. Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

60. Slavery Era Disclosure

a. Contractor acknowledges that this contract shall not be binding upon the City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director of Administrative Services finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this Contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or \$1,000, whichever is greatest as determined by the Director of Administrative Services. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

c. Contractor shall maintain records necessary for monitoring their compliance with this provision.

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

RFP/RFQ ATTACHMENT IV: CITY'S AGREEMENT TERMS AND CONDITIONS

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

CITY

Recommended by:

[DEPT HEAD OR DESIGNEE]
[TITLE]
[DEPT]

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Deputy City Attorney

Approved:

Director of the Office of Contract
Administration, and
Purchaser

CONTRACTOR

[company name – TBD]

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

[name of authorized representative – TBD]
[title – TBD]
[address – TBD]
[city, state, zip – TBD]

City vendor number: [vendor # – TBD]

Appendices

- A: Services to be Provided by Contractor
- B: Calculation of Charges

RFQ ATTACHMENT V: RESPONSE TEMPLATE

REQUEST FOR QUALIFICATIONS FOR As-Needed Environmental and Related Professional Services RFQ#PRT1213-07

CONTACT: sfport-contracts@sfport.com 415-274-0443

Before getting started, please ensure your Response meets the Minimum Qualifications in Section B to be eligible for evaluation. Responses received under this RFQ that fail to address each of the requested items in this Attachment V, Response Template in sufficient and complete detail to substantiate that the Respondent has met the City's Minimum Qualifications, will be deemed non-responsive and will not be considered. Note that responses of "To be provided upon request" or "To be determined" or the like, or that do not otherwise provide the information requested (e.g., left blank) are not acceptable.

Instructions are provided in blue and may be deleted. Please complete your Response in the template provided, using as much space as needed. Indicate clearly where separate documents are provided. In order to receive the maximum amount of points, please be sure to follow this format and thoroughly (but concisely) address each section.

Note that documents under this RFQ process may be subject to public disclosure in accordance with Attachment I, Section 26.

A. Executive Summary

1. Respondent Information and Partner(s)

Respondent's Firm Name

Respondent's Firm Address
(Principal Place of Business)

Location of Respondent's
Lead Office to Perform
Services under this RFQ

Respondent's Website
Address

Respondent's City Vendor ID

Note: Possession of this number serves as partial verification that the Respondent has completed the City's administrative requirements (see Attachment III, Section A for more details).

Respondent's Partner and
Subcontractor Name(s), if
applicable

RFQ ATTACHMENT V: RESPONSE TEMPLATE

2. *RFQ Contact*

Identify the person that will serve as your RFQ contact. This contact will receive e-mail notifications regarding the RFQ process.

Name

Title

Email

Phone

3. *How did you find out about this RFQ Opportunity?*

Insert Response Here.

4. *Letter of Introduction and Executive Summary of Response*

Attach a letter of introduction and executive summary of the Response. Include a summary of your proposed partnerships, as applicable. The letter must be signed by a person authorized by your organization to contractually obligate your organization to perform the commitments contained in the Response. Submission of the letter will constitute a representation by your organization that your organization is willing and able to perform the commitments contained in the Response. In addition, please acknowledge attachments in this letter.

B. Minimum Qualifications

Any Respondent that does not demonstrate that it meets these Minimum Qualifications by the Response deadline will be issued a notice of non-responsiveness and will not be evaluated or eligible for pre-qualification and contract award under this RFQ.

1. *Respondent Certification*

The Respondent certifies that:

RFQ ATTACHMENTS:

It has completed the requirements and submitted the forms described in Attachments I, II, III, IV, and V as part of its Response, as applicable.

Yes

EXPERIENCE:

It has submitted three (3) Prior Project Descriptions in accordance with this RFQ Attachment V, Section B.

Yes

It has experience in providing the scopes of services in at least four (4) of the Major Categories described in this RFQ Table 2.

Yes

RFQ ATTACHMENT V: RESPONSE TEMPLATE

It has experience in obtaining permits and complying with mandates from the Regional Water Quality Control Board, the U.S. Army Corps of Engineers, the Bay Conservation and Development Commission, and the California Department of Fish and Game.

Yes

It has experience delivering services in at least four (4) of the Major Categories described in this RFQ Table 2 to at least two Port, municipality or government clients.

Yes

Experience is current: For the prior projects referred to in the preceding sentence, the Respondent's performance occurred within seven (7) years of the date of this RFQ.

Yes

TEAM QUALIFICATIONS:

It has demonstrated in this response that the Respondent has met **each and all of the following requirements**:

Team has experience with all Major and Minor Categories of services described in this RFQ Table 2.

Yes

Team qualifications represent expertise in all disciplines specified in the RFQ Scope of Work Table 2.

Yes

The Respondent's Key Personnel assigned to the Port's Program, as verified in the Respondent's Program Staffing Structure and/or Program Staff Qualifications (RFQ Attachment V, Section D), possess appropriate State of California licenses or other required licenses, registrations, or certification in their particular disciplines. In addition, the Respondent's staff include a: (1) Qualified Stormwater Pollution Prevention Plan (SWPPP) Practitioner (QSP) and Qualified SWPPP Developer (QSD) as defined by the State Water Resources Control Board Stormwater Construction General Permit, Certified (American Board of Industrial Hygiene) Industrial Hygienist (CIH), California (Cal OSHA) Certified Asbestos Consultant, California (Cal OSHA) Certified Lead Professional, California Registered Geologist, California Registered Hydrogeologist.

Yes

PROJECT MANAGER:

The Respondent's Project Manager possesses at least seven (7) years' experience in environmental and related professional services as described in Table 2 of this RFQ.

Yes

The Respondent's Project Manager (or other title for the role directly responsible for managing project resources, budget, timeline, deliverables and completion) assigned to the Port's program, as verified in the Respondent's Program Staffing Structure and/or Program Staff Qualifications (RFQ Attachment V, Section D), is the same Project Manager that provided comparable services to at least one (1) of the Respondent's prior projects described above.

Yes

The Respondent's Project Manager has at least two (2) years experience providing similar services to a municipal or Port client.

Yes

RFQ ATTACHMENT V: RESPONSE TEMPLATE

C. PRIME CONSULTANT AND TEAM EXPERIENCE (PRIOR PROJECTS) (20 POINTS)

Using the following template, Respondents must submit Prior Project Descriptions in accordance with the Minimum Qualifications stated above in Section B. These Prior Projects should demonstrate the expertise of the Respondent in the fields necessary to complete the anticipated scope of services generally described in this RFQ; show experience with similar professional services contracts involving the anticipated scope of services generally described in this RFQ; and demonstrate the Respondent's capability to complete deliverables within a set budget.

Respondents who submit more than three Prior Project Descriptions are advised that the Port will only review the first three Prior Project Descriptions to determine whether the Respondent has met the RFQ Minimum Qualifications.

For each of your Prior Projects, Respondents must specify a client contact who will serve as a reference for the Respondent. The Port will not inform Respondents when references will be contacted. The Respondent should ensure that client contact information listed in the Response is up-to-date and should notify references that the Port will be contacting them. See Attachment I, Section 14.

Respondents may list up to two (2) Port projects as Prior Projects and Port Project Managers can be listed as Client Contacts/References. However, Respondents must submit at least one Prior Project Description for a client other than the Port of San Francisco.

Failure to provide the information as requested will result in rejection of your Response.

RFQ ATTACHMENT V: RESPONSE TEMPLATE

PRIOR PROJECT DESCRIPTION 1

Project	<u>Project Name</u>
Project Location	<u>City, State</u>
Client	<u>Client Name (City, County, etc.)</u>
Client Unit (if applicable)	<u>Client Agency, Department, or Unit Name</u>
Client Contact Name and Title	_____
Client Contact Phone	_____
Client Contact E-mail	_____
Timeline	<u>Month/Year to Month/Year; Length of project beginning to end</u>
Consultant Firm Name	_____
Consultant's Project Manager	<u>Same as Project Manager proposed to Port?</u>
Total Project Cost at Bid	<u>\$00,000.00</u>
Total Project Cost at Completion	<u>\$00,000.00</u>

Project Background Include background information regarding the client and/or program, as applicable. What were the project goals and desired outcomes?

Insert Response Here.

Project Scope What were the project activities your firm completed? Provide sufficient information to give the Port insight into the size/complexity and scope of the project.

Insert Response Here.

Project Approach How did you approach the project? What methodologies were used, and how did those address the project goals? Describe any challenges you have faced, including strategies you used to address them.

Insert Response Here.

Project Staffing Identify Key Personnel on the project team with titles and roles, including all subcontractors. Include brief narrative descriptions of the responsibilities each person had on the project.

Insert Response Here.

Involvement of Stakeholders Discuss how stakeholders were involved in the project (e.g., regulatory agencies, the public, etc.). Identify any permits obtained. *Insert Response Here.*

Project Costs and Schedule For any differing amount between cost at bid and cost at completion, explain the sources and/or causes of these changes (e.g., owner-generated scope modifications, unforeseen conditions, regulatory agency direction, or other). Was the project completed within the agreed upon schedule?

Insert Response Here.

Project Outcomes What, if any, measurable service deliverables or outcomes can be attributed to your services? How did you add value for the client?

Insert Response Here.

Respondent to check as applicable:

Same Project Manager proposed to Port Yes Similar Client Yes

Scope includes at least 4 Major Categories (RFQ Table 2) Yes

RWQCB Yes USACE Yes CDFG Yes BCDC Yes Project complete within last 7 years? Yes

RFQ ATTACHMENT V: RESPONSE TEMPLATE

PRIOR PROJECT DESCRIPTION 2

Project	<i>Project Name</i>
Project Location	<i>City, State</i>
Client	<i>Client Name (City, County, etc.)</i>
Client Unit (if applicable)	<i>Client Agency, Department, or Unit Name</i>
Client Contact Name and Title	
Client Contact Phone	
Client Contact E-mail	
Timeline	<i>Month/Year to Month/Year; Length of project beginning to end</i>
Consultant Firm Name	
Consultant's Project Manager	<i>Same as Project Manager proposed to Port?</i>
Total Project Cost at Bid	<i>\$00,000.00</i>
Total Project Cost at Completion	<i>\$00,000.00</i>

Project Background Include background information regarding the client and/or program, as applicable. What were the project goals and desired outcomes?
[Insert Response Here.](#)

Project Scope What were the project activities your firm completed? Provide sufficient information to give the Port insight into the size/complexity and scope of the project.
[Insert Response Here.](#)

Project Approach How did you approach the project? What methodologies were used, and how did those address the project goals? Describe any challenges you have faced, including strategies you used to address them.
[Insert Response Here.](#)

Project Staffing Identify Key Personnel on the project team with titles and roles, including all subcontractors. Include brief narrative descriptions of the responsibilities each person had on the project.
[Insert Response Here.](#)

Involvement of Stakeholders Discuss how stakeholders were involved in the project (e.g., regulatory agencies, the public, etc.). Identify any permits obtained.
[Insert Response Here.](#)

Project Costs and Schedule For any differing amount between cost at bid and cost at completion, explain the sources and/or causes of these changes (e.g., owner-generated scope modifications, unforeseen conditions, regulatory agency direction, or other). Was the project completed within the agreed upon schedule?
[Insert Response Here.](#)

Project Outcomes What, if any, measurable service deliverables or outcomes can be attributed to your services? How did you add value for the client?
[Insert Response Here.](#)

Respondent to check as applicable:

Same Project Manager proposed to Port Yes Similar Client Yes

Scope includes at least 4 Major Categories (RFQ Table 2) Yes

RWQCB Yes USACE Yes CDFG Yes BCDC Yes Project complete within last 7 years? Yes

RFQ ATTACHMENT V: RESPONSE TEMPLATE

PRIOR PROJECT DESCRIPTION 3

Project	<u>Project Name</u>
Project Location	<u>City, State</u>
Client	<u>Client Name (City, County, etc.)</u>
Client Unit (if applicable)	<u>Client Agency, Department, or Unit Name</u>
Client Contact Name and Title	<u></u>
Client Contact Phone	<u></u>
Client Contact E-mail	<u></u>
Timeline	<u>Month/Year to Month/Year; Length of project beginning to end</u>
Consultant Firm Name	<u></u>
Consultant's Project Manager	<u>Same as Project Manager proposed to Port?</u>
Total Project Cost at Bid	<u>\$00,000.00</u>
Total Project Cost at Completion	<u>\$00,000.00</u>

Project Background Include background information regarding the client and/or program, as applicable. What were the project goals and desired outcomes?

Insert Response Here.

Project Scope What were the project activities your firm completed? Provide sufficient information to give the Port insight into the size/complexity and scope of the project.

Insert Response Here.

Project Approach How did you approach the project? What methodologies were used, and how did those address the project goals? Describe any challenges you have faced, including strategies you used to address them.

Insert Response Here.

Project Staffing Identify Key Personnel on the project team with titles and roles, including all subcontractors. Include brief narrative descriptions of the responsibilities each person had on the project.

Insert Response Here.

Involvement of Stakeholders Discuss how stakeholders were involved in the project (e.g., regulatory agencies, the public, etc.). Identify any permits obtained.

Insert Response Here.

Project Costs and Schedule For any differing amount between cost at bid and cost at completion, explain the sources and/or causes of these changes (e.g., owner-generated scope modifications, unforeseen conditions, regulatory agency direction, or other). Was the project completed within the agreed upon schedule?

Insert Response Here.

Project Outcomes What, if any, measurable service deliverables or outcomes can be attributed to your services? How did you add value for the client?

Insert Response Here.

Respondent to check as applicable:

Same Project Manager proposed to Port Yes Similar Client Yes

Scope includes at least 4 Major Categories (RFQ Table 2) Yes

RWQCB Yes USACE Yes CDFG Yes BCDC Yes Project complete within last 7 years? Yes

RFQ ATTACHMENT V: RESPONSE TEMPLATE

D. Consulting Team Qualifications – Assigned Project Staff and Organization (50 points)

Even if using an alternative format for your Response, the following information must be included in the order specified to be scored appropriately.

1. Respondent's Firm History and Organizational Structure

Briefly describe your organization, including history, number of years in business, organizational and corporate structure, office location(s), ownership structure, staff size and composition.

[Insert Response Here.](#)

2. List of Current and Past Environmental Services Clients

Include client name, client contact name and month/year start and end dates of environmental services you have provided within the past 5 years.

[Insert Response Here.](#)

3. Program Staffing Structure

Describe the staffing structure proposed for your anticipated services under this RFQ, including subcontractors and any partners. Include a proposed staff organization chart. The organization chart should be in graphic format. The organization chart should clearly identify Key Personnel, and include sufficient detail on the staff levels to be assigned to the services by specialization and full time equivalent (FTE) counts, as appropriate.

[Insert Response Here](#)

4. Team Workload and Capacity

Provide the Respondent team's current workload and capacity to complete multidisciplinary work in a timely manner and on short notice.

[Insert Response Here](#)

5. Program Key Staff Qualifications

Expanding on the proposed staff organization chart information provided above, use the following tables or alternative format to provide detailed narrative information on the proposed key staff roles and responsibilities, qualifications and educational background of key staff members, including subcontractor and partner staff, if applicable, proposed to perform services for the Port. Include as many tables as needed.

RFQ ATTACHMENT V: RESPONSE TEMPLATE

Name, Title	<i>Insert Response Here.</i>
Contract Service Area of Expertise, Role, and Responsibilities	<i>Insert Response Here.</i>
Workload	<i>Insert Response Here.</i> Describe your staff's current workload and availability over the proposed contract term.
Education and Professional Qualifications	<i>Insert Response Here.</i> Indicate if resume or Curriculum Vitae "CV" is attached.
Experience Delivering Environmental Services	<i>Insert Response Here.</i> Describe your staff's experience delivering Environmental Services. Describe your staff's experience producing cost effective project results, if applicable. Why will this person be an effective member of the proposed team?

Name, Title	<i>Insert Response Here.</i>
Contract Service Area of Expertise, Role, and Responsibilities	<i>Insert Response Here.</i>
Workload	<i>Insert Response Here.</i> Describe your staff's current workload and availability over the proposed contract term.
Education and Professional Qualifications	<i>Insert Response Here.</i> Indicate if resume or Curriculum Vitae "CV" is attached.
Experience Delivering Environmental Services	<i>Insert Response Here.</i> Describe your staff's experience delivering Environmental Services. Describe your staff's experience producing cost effective project results, if applicable. Why will this person be an effective member of the proposed team?

RFQ ATTACHMENT V: RESPONSE TEMPLATE

Name, Title	<i>Insert Response Here.</i>
Contract Service Area of Expertise, Role, and Responsibilities	<i>Insert Response Here.</i>
Workload	<i>Insert Response Here.</i> Describe your staff's current workload and availability over the proposed contract term.
Education and Professional Qualifications	<i>Insert Response Here.</i> Indicate if resume or Curriculum Vitae "CV " is attached.
Experience Delivering Environmental Services	<i>Insert Response Here.</i> Describe your staff's experience delivering Environmental Services. Describe your staff's experience producing cost effective project results, if applicable. Why will this person be an effective member of the proposed team?

Name, Title	<i>Insert Response Here.</i>
Contract Service Area of Expertise, Role, and Responsibilities	<i>Insert Response Here.</i>
Workload	<i>Insert Response Here.</i> Describe your staff's current workload and availability over the proposed contract term.
Education and Professional Qualifications	<i>Insert Response Here.</i> Indicate if resume or Curriculum Vitae "CV" is attached.
Experience Delivering Environmental Services	<i>Insert Response Here.</i> Describe your staff's experience delivering Environmental Services. Describe your staff's experience producing cost effective project results, if applicable. Why will this person be an effective member of the proposed team?

RFQ ATTACHMENT V: RESPONSE TEMPLATE

E. Technical Approach and Commitment to Cost Effective and Accountable Contracting Processes (30 points)

In your responses, be sure to address and integrate the relevant components described in RFQ Section 2, Scope of Work. Use as much space as needed, but be concise and focused on addressing the questions and issues, as stated.

1. Program Goals and Requirements

Describe your approach for providing the anticipated scope of services described in RFQ Section 2, Scope of Work.

- A. Describe your Overall Approach to Ensure Successful Attainment of Program Goals: How will your approach help the Port meet the Program Goals stated in RFQ Section 2.2?
Insert Response Here.
- B. Program Management and Contract Administration: 1) Provide your understanding of the nature and implementation of as-needed contracts required of the Port. 2) Discuss your approach to addressing and completing the tasks to be assigned on an as-needed basis. 3) Describe your Project Management capability and contract administration methodology. 4) How will you deliver cost-effective services and maintain accountability for your contractual obligations?
Insert Response Here.
- C. Program Oversight and Teamwork: 1) How will you direct and review work of your team, including your own (prime) team members, subcontractor(s) and/or partner(s), as applicable? 2) How will you split up the work and funding between the prime, subcontractor(s) and/or partner(s), as applicable on an as-needed basis? 3) How long has the proposed team (prime's team, subcontractors, and/or partners) worked together and on what projects? For the projects, describe the prior scopes, timeframes, and client(s). 4) Provide examples of your ability to work with a public agency owner as a team including other contractors hired to represent the owner, as applicable.
Insert Response Here.
- D. Program Performance and Outcomes Measurement: 1) How will you measure, track and report Program performance and outcomes? 2) How will you measure progress on the budget, progress on deadlines, and how will you assure the quality of deliverables? 3) What adjustments would you make if Program performance and outcomes are less successful than expected?
Insert Response Here.
- E. Program Coordination with Port: 1) Describe your organization's expectations and/or assumptions about the Port's communication protocols necessary to successfully complete the services as part of a public agency team. 2) Provide a list of questions you would need answered or other Port resources you would need from the Port to successfully complete the services.
Insert Response Here.
- F. Competitive Differences: 1) What makes your firm's approach to the services superior to other organizations in your industry? 2) Describe any other asset, expertise, experience, data or technology that provides your organization with a competitive edge or advantage that will provide a benefit to your clients. Include any lessons learned.
Insert Response Here.
- G. Other Services: Describe any other services or programs you offer clients that may benefit the Port.

RFQ ATTACHMENT V: RESPONSE TEMPLATE

Insert Response Here.

F. Program Budget

Respondents should provide a three-year Proposed Fee Schedule identifying (1) each staff person's name, (2) professional discipline or job classification, (3) job description, and (4) billable hourly rate for all Respondent and proposed subcontractor and/or partner staff in a separate sealed envelope in accordance with RFQ Section 4, Response Submission Requirements.

The hourly rates must include indirect costs, fringe benefits, and non-personnel costs (operating costs). At least one (1) Program Manager must be included in the budget. There is no minimum pay rate for positions except for Minimum Compensation Ordinance requirements described in Attachment IV. The maximum billable hourly rate is \$180/hour for the highest job classification. The rates will be fixed for the full term of the contract.

The Port intends to award contracts to a maximum of three pre-qualified Respondents that will provide the best overall value of services requested. The Port reserves the right to select pre-qualified Respondents without regard to the lowest priced budget, fee schedule, or hourly rates for contract negotiations and contract award.