

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CONTRACT ADMINISTRATION
PURCHASING DIVISION

SERVICES AGREEMENT—INDIVIDUAL CONTRACTOR

THIS AGREEMENT (hereafter “Agreement”) is made as of [insert date], in San Francisco, California, by and between [insert name of individual], an individual (“Contractor”), and the City and County of San Francisco, a municipal corporation (the “City”), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, the City desires that Contractor perform the Services (as defined below); and,

WHEREAS, a Request for Proposal (“RFP”) was issued on [insert date], and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, approval for this Agreement was obtained from the City’s Civil Service Commission by Resolution No. [insert number], dated [insert date];

NOW, THEREFORE, Contractor and the City agree as follows:

1. Term. Subject to Section 2, the term of this Agreement shall start on the later of [insert date] or the date on which the City’s Controller certifies to the availability of funds, as described in Section 2. Unless sooner terminated as set forth herein, the term shall end on [insert date].

2. Fiscal Limitations. THIS SECTION 2 SUPERSEDES ANY CONFLICTING PROVISION OF THIS AGREEMENT. This Agreement is subject to the fiscal provisions of the City’s charter and the budget decisions of its Mayor and Board of Supervisors. No funds will be available hereunder until prior written authorization certified by the City’s Controller. The Controller cannot authorize payments unless funds have been certified as available in the budget or in a supplemental appropriation. This Agreement shall automatically terminate, without liability to the City, if funds are not properly appropriated by the Mayor and Board of Supervisors or certified by the Controller. The City’s obligations hereunder shall never exceed the amount certified by the Controller for the purpose and period stated in such certification. The City, its employees and officers are not authorized to request services, materials, equipment or supplies that are beyond the scope of those expressly described herein, unless this Agreement is amended in writing and approved as required by law. Without such an amendment or approval, the City shall not be required to pay Contractor for any such services, materials, equipment or supplies. The City, its employees and officers are not authorized to offer or promise any additional funding that would exceed the maximum amount specified in Section 4. Such additional funding requires lawful approval and certification by the Controller. Without such lawful approval and certification, the City shall not be required to provide such additional funding.

3. Services. Contractor agrees to perform the services (the “Services”) described in Appendix A (“Services to be Provided by the Contractor”) on the terms described herein and in such Appendix.

4. Compensation. The City shall pay Contractor for the Services on or before the [insert day] day of each month. Each payment shall cover only those Services that the City determines have been performed as required hereunder as of the [insert day] day of the immediately preceding month. The aggregate amount of payments under this Agreement shall not exceed [insert amount]. A breakdown of the payments to be made is contained in Appendix B. Unless otherwise agreed by the City, payments will be made by U.S. mail to the address specified in Section 17. The City shall not pay any interest, penalties or late charges on any payment made after the date specified in this Section. No payment shall relieve Contractor of Contractor's obligations hereunder if the unsatisfactory nature of any Services was not detected at the time of payment.

5. Invoices. Contractor shall submit invoices for the Services in a form acceptable to the City. Each invoice must have a unique identifying number.

6. Submitting False Claims. 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. 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 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.

7. Taxes. Contractor shall pay all taxes levied in connection with this Agreement or the Services, including any self-employment, possessory interest or sales and use taxes.

8. 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, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not

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

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, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorney's fees, arising from this section.

9. 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) (Reserved)
- 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 \$300,000 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.

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, its Officers, Agents, and Employees.

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. (Reserved)

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.

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. (Reserved)

k. Any of the terms of conditions of this Section 9 may be waived by the City's Risk Manager in writing, and attached to this Agreement as Appendix C. Such waiver is fully incorporated herein. The waiver shall waive only the requirements that are expressly identified and waived, and under such terms and conditions as stated in the waiver.

10. 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 active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons 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.

[10. Indemnification.]

a. **General.** To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

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

c. **Copyright infringement.** Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Contractor's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the

performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

11. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 4 (COMPENSATION) 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.

12. Default. Contractor shall be in default if Contractor: (a) fails to perform any covenant (including a lapse in insurance coverage); (b) files or is the subject of a petition for bankruptcy or insolvency; or, (c) has a court-ordered receiver or trustee appointed with respect to Contractor's assets.

13. Remedies. If a default under Section 12 has occurred and is continuing, the City may, individually or in combination with any other remedy: (a) terminate this Agreement; (b) offset the amount of any outstanding liability of Contractor against funds otherwise due and owing hereunder or any other agreement with Contractor; (c) withhold funds due hereunder; (d) cure the default, in which event all amounts expended by the City in effecting such cure shall be payable upon demand, with interest from the date of incurrence at the maximum rate permitted by law; or (e) exercise any other remedy available by law. The City shall have no obligation to exercise any of the foregoing remedies.

14. Termination for Convenience. The City may terminate this Agreement without cause or penalty upon at least thirty days' prior written notice to Contractor. In such event, Contractor shall continue to perform the Services until the termination effective date, and Contractor will be paid for those Services adequately performed through such date. Thereafter, this Agreement shall terminate, subject to Section 40. Contractor disclaims any right to anticipated profits or losses or any other expense not expressly covered under Section 4 and incurred prior to such termination effective date.

15. 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.

16. Confidentiality. Contractor shall keep strictly confidential any of the City's proprietary or confidential information to which Contractor has access while performing the Services and shall not make any disclosure thereof without the prior written consent of the City.

17. Notices. 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: [insert name or title of department contact person, name of department, mailing address, and e-mail address; fax number is optional]

To Contractor: [insert name of contractor, mailing address, and e-mail address; fax number is optional]

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

18. Ownership of Results. Any drawings, plans, studies, reports, blueprints, memoranda, specifications, computer media or other documents or media prepared by Contractor in performing the Services, shall belong and be promptly transmitted to the City. With the City's prior approval, Contractor may retain and use copies of such works or works described in Section 19 for reference or to document Contractor's experience.

19. Works for Hire. Any artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship created by Contractor in performing the Services shall be "works for hire" under Title 17, U.S.C.A., and all copyrights therein shall belong to the City. Contractor hereby assigns to the City all such copyrights and agrees to provide any material and execute any documents necessary to effectuate such assignment.

20. Audit. Contractor shall maintain accurate books and records relating to this Agreement and the Services, including accounting records and copies of all invoices. Contractor shall make such books and records available to the City for review and audit for at least five years after termination of this Agreement, at a location that is readily accessible to the City.

21. No Employees; No Assignment or Subcontracting. The Services are personal in nature and shall be performed by Contractor individually and without the assistance of any employee, agent, subcontractor or any other person or entity. Neither this Agreement nor any duties or obligations hereunder may be assigned, subcontracted or delegated by Contractor without the prior written consent of the City.

22. 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.

23. Nondiscrimination. 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. Contractor shall fully comply with all applicable provisions of Chapters 12B and 12C of the San Francisco Administrative Code, which are hereby made a part of this Agreement as though fully set forth herein. Contractor's failure to so comply shall be deemed a material breach of this Agreement, and Contractor shall be liable for, 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. Any such penalty shall be payable upon demand and may be set off against any amounts due to Contractor under this Agreement or under any other agreement with City. As a condition hereto, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" (form HRC-12B-101) with supporting documentation and secure the approval of the form by HRC.

24. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code Section 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.

25. Tropical Hardwood and Virgin Redwood Ban. Pursuant to Section 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.

26. Drug-Free Workplace. 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 to comply with such Act. Any violation of this Section shall be deemed a material breach of this Agreement.

27. Resource Conservation. Contractor shall comply in good faith with Chapter 5 of the San Francisco Environment Code ("Resource Conservation"), which is hereby made a part of this Agreement as though fully set forth herein. Contractor's failure to so comply shall be

deemed a material breach of this Agreement, and Contractor shall be liable for liquidated damages for each violation in an amount equal to the greater of Contractor's net profit under this Agreement or 5% of the total amount of this Agreement. Any such liquidated damages shall be payable upon demand and may be set off against any amounts due to Contractor under this Agreement or under any other agreement with City.

28. Sunshine Ordinance. Contractor understands that under Section 67.24(e) of San Francisco Administrative Code, contracts, contractors' bids, responses to requests for proposals and all other records of communications between the City and persons or firms seeking contracts, must be open to public inspection immediately after a contract has been awarded. All information provided by Contractor which is covered by that ordinance (as it may be amended) will be made available to the public upon appropriate request.

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

30. 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.

31. Supervision of Minors. Contractor shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Contractor in which he or she would have supervisory or disciplinary power over a minor under his or her care. If Contractor is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Contractor shall not hire any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3). If Contractor hires an employee or volunteer to provide services to minors at any location other

than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Contractor shall comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Contractor shall provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian. Contractor acknowledges and agrees that failure by Contractor to comply with any provision of this section of the Agreement shall constitute a default of this Agreement.

32. NO WAIVER. ANY FAILURE TO ENFORCE ANY RIGHT OR TO REQUIRE performance of any provision of this Agreement shall not be considered a waiver of such right or performance.

33. Modifications. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed by each party hereto.

34. Administrative Remedy. If a dispute occurs as to the meaning hereof, then prior to resort to any other legal remedy, such dispute shall be resolved by the City's Purchasing Division.

35. California Law; Venue. This Agreement shall be governed by the laws of California. The venue for all litigation or other disputes relative to this Agreement shall be San Francisco.

36. Construction. Section headings are for reference only and shall not be used to interpret this Agreement. Terms such as "hereunder" or "herein" refer to this Agreement as a whole. Terms such as "include," or "including" shall be deemed followed by the words "without limitation." References to consents, approvals, determinations or other decisions of the City shall refer to the sole judgment of City, acting through the department or commission referred to in Section 17.

37. Entire Agreement. This Agreement contains the entire agreement between the parties, and supersedes all other oral or written provisions. The attached Appendices A and B are a part of this Agreement.

38. Compliance with Laws. Contractor shall comply with the City's charter, codes, ordinances and regulations and with applicable state and federal laws and regulations (including the Americans with Disabilities Act), as they may be amended from time to time.

39. Severability. If any provision hereof is found to be invalid or unenforceable, such finding shall not affect the validity of any other provision hereof; and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties.

40. Rights and Duties upon Termination or Expiration

The following provisions hereof shall survive termination of this Agreement:

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|---|---|
| 2. Fiscal Limitations. | 21. No Employees; No Assignment or Subcontracting |
| 6. Submitting False Claims. | 22. Limitations on Contributions. |
| 7. Taxes. | 33. Modifications |
| 8. Independent Contractor; Payment of Taxes and Other Expenses. | 34. Administrative Remedy |
| 9c Insurance | 35. California Law; Venue |

- | | |
|---------------------------|---------------------------------------|
| 10. Indemnification | 36. Construction |
| 11. Liability of City | 37. Entire Agreement |
| 18. Ownership of Results. | 39. Severability |
| 19. Works for Hire | 41. Protection of Private Information |
| 20. Audit | |

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 1, 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.

41. 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.

42. Reserved.

43. Food Service Waste Reduction Requirements. 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 \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$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.

44. 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 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. 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.

45. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first referenced above.

CITY

Recommended by:

[name]
[title]
[department]

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____

[name of Deputy City Attorney]
Deputy City Attorney

Approved:

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

Appendices

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

► If you obtained an insurance waiver from the Risk Manager, name Appendix C here:

[C: Insurance Waiver]

► In the footer, the page number should match the “of” number, such as “13 of 13.”

CONTRACTOR

[company name, if applicable]

I have read and understood paragraph 24, 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]
[title]
[optional: company name]
[optional: address]
[optional: city, state, ZIP]

City vendor number: [vendor number]

Appendix A

Services to be Provided by Contractor

1. Description of Services

2. Reports

Contractor shall submit written reports as requested by the [insert name of department]. Format for the content of such reports shall be determined by the [insert name of department].

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

Appendix B

Calculation of Charges

► **List, as applicable:**

Hourly Rate

Flat rate for specified period (e.g., monthly)

Rate for use of Contractor's equipment, if applicable

Rates for faxes (sending only), mileage, etc.

Actual costs for Contractor's meals accommodations, long distance and cellular phone charges, postage, vehicle rental, etc., subject to the approval of the City.

Any other applicable rates or charges under the Agreement.

Appendix C

Insurance Waiver

► Use as appropriate and only if an insurance waiver has been signed and granted by the Risk Manager.