

**Local Agency Formation Commission
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, California 94102-4689**

Agreement between the San Francisco Local Agency Formation Commission and

_____.

This Agreement is made this _____, in the City and County of San Francisco, State of California, by and between: _____, hereinafter referred to as “Contractor,” and the San Francisco Local Agency Formation Commission, hereinafter referred to as “LAFCO.”

Recitals

WHEREAS, LAFCO seeks an independent consultant to perform services related to the Advisory and Monitoring role of SF LAFCO in the implementation of the Community Choice Aggregation Program as specifically itemized in Appendix A and B and,

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

Now, THEREFORE, the parties agree as follows:

1. Term of the Agreement

The term of this Agreement shall be from _____ to _____.

2. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, “Description of Services,” attached hereto and incorporated by reference as though fully set forth herein.

3. Compensation

Compensation shall be made in monthly payments on or before the 10th day of each month for work, as set forth in Section 2 of this Agreement, that the Executive Officer, in his or her sole discretion, concludes has been performed and accepted as of the 10th day of the immediately preceding month. In no event shall the amount of this Agreement exceed _____. The break down 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 Executive Officer as being in accordance with this Agreement. LAFCO 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 or in the event work is not accepted.

In no event shall LAFCO be liable for interest or late charges for any late payments.

4. Guaranteed Maximum Costs

(a) LAFCO’s obligation hereunder shall not at any time exceed the amount set forth in Section 3.

(b) Except as may be provided by laws governing emergency procedures, officers and employees of LAFCO are not authorized to request, and LAFCO is not required to reimburse the Contractor for services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

(c) Officers and employees of LAFCO are not authorized to offer or promise, nor is LAFCO required to honor, any offered or promised additional funding in excess of the maximum amount of funding set forth in Section 3.

5. Payments; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to LAFCO and must include the Contract Progress Payment Authorization number if applicable. All amounts paid by LAFCO to Contractor shall be subject to audit by Controller.

Payment shall be made by LAFCO to Contractor at the address specified in the section entitled "Notices to the Parties."

6. Submitting False Claims; Monetary Penalties

Any contractor, subcontractor or consultant who submits a false claim shall be liable to LAFCO for the amount of damages, which LAFCO sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to LAFCO for the costs, including attorneys' fees, of a civil action brought to recover any of those damages. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to LAFCO if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of LAFCO 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 LAFCO; (c) conspires to defraud LAFCO by getting a false claim allowed or paid by LAFCO; (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 LAFCO; or (e) is a beneficiary of an inadvertent submission of a false claim to LAFCO, subsequently discovers the falsity of the claim, and fails to disclose the false claim to LAFCO within a reasonable time after discovery of the false claim.

7. Independent Analysis

In performing services under this Agreement, Contractor shall provide its independent analysis and shall develop issues and conclusions based on its own determinations. In the event Contractor utilizes documents, data, or other information prepared by third parties, or relies on work Contractor has developed previously, such use shall be disclosed and the use of any such text shall be set off by quotations and reference shall be made to the quoted document, including title, date of publication and author.

8. 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 LAFCO 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 LAFCO 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 LAFCO to enable LAFCO to comply with any reporting requirements for possessory interests that are imposed by applicable law.

9. Payment Does Not Imply Acceptance of Work

The granting of any payment by LAFCO, 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 LAFCO and in such case must be replaced by Contractor without delay.

10. 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 LAFCO’s reasonable requests regarding assignment of personnel, but Contractor must supervise all personnel, including those assigned at LAFCO’s request. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

11. Responsibility for Equipment

LAFCO 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 LAFCO.

12. 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 LAFCO under this Agreement. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between LAFCO and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from LAFCO 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.

b. Payment of Taxes and Other Expenses: Should LAFCO, 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). LAFCO 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 LAFCO, upon notification of such fact by LAFCO, Contractor shall promptly remit such amount due or arrange with LAFCO 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 LAFCO. 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 reduction in LAFCO's financial liability so that LAFCO'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.

13. 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; 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.

b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

- (1) Name as Additional Insured the LAFCO and 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. All policies shall provide thirty days' advance written notice to LAFCO of cancellation mailed to the following address:

Local Agency Formation Commission
1 Dr. Carlton B. Goodlett Place Room 244
San Francisco, CA 94102-4689

d. 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.

e. 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.

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

g. Before commencing any operations under this Agreement, Contractor must furnish to LAFCO certificates of insurance, in form and with insurers satisfactory to LAFCO, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon LAFCO request.

h. Approval of the insurance by LAFCO shall not relieve or decrease the liability of Contractor hereunder.

14. Indemnification

Contractor shall indemnify and save harmless LAFCO and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, 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, resulting directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, the use of Contractor's facilities or equipment provided by LAFCO or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on LAFCO, 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 LAFCO 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.

In addition to Contractor's obligation to indemnify LAFCO, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend LAFCO 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 LAFCO and continues at all times thereafter.

Contractor shall indemnify and hold LAFCO 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 LAFCO, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

15. 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 LAFCO may have under applicable law.

16. Liability of LAFCO

LAFCO'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 LAFCO 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.

17. Liquidated Damages.

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 2 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, LAFCO will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one thousand dollars (\$1,000) per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that LAFCO will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. LAFCO may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by LAFCO because of Contractor's failure to deliver to LAFCO within the time fixed or such extensions of time permitted in writing by Purchasing.

18. 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: 6, 7, 8, 14, 22, 23, 29, or 39.
 - (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 LAFCO 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 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, LAFCO 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, LAFCO 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 LAFCO on demand all costs and expenses incurred by LAFCO in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. LAFCO shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between LAFCO and Contractor all damages, losses, costs or expenses incurred by LAFCO 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.

19. Termination for Convenience

a. LAFCO shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. LAFCO 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 LAFCO and to minimize the liability of Contractor and LAFCO to third parties as a result of termination. All such actions shall be subject to the prior approval of LAFCO. 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 LAFCO.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At LAFCO's direction, assigning to LAFCO any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, LAFCO shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (5) Subject to LAFCO'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 LAFCO designates to be completed prior to the date of termination specified by LAFCO.
- (7) Taking such action as may be necessary, or as the LAFCO may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which LAFCO has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to LAFCO 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 LAFCO directed Contractor to perform prior to the specified termination date, for which services or work LAFCO 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 LAFCO, 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 LAFCO or otherwise disposed of as directed by the LAFCO.
- (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 LAFCO, and any other appropriate credits to LAFCO against the cost of the services or other work.

d. In no event shall LAFCO be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by LAFCO, 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, LAFCO may deduct: (1) all payments previously made by LAFCO for work or other services covered by Contractor's final invoice; (2) any claim which LAFCO 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 LAFCO, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and LAFCO's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

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

20. Rights and Duties Upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 6, 8, 10, 12, 13, 15, 16 17, 18, 21, 22, 23, 24, 25, 26, 27, 29, 30, and 36 through 40.

b. Subject to the immediately preceding subsection (a), 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 LAFCO, and deliver in the manner, at the times, and to the extent, if any, directed by LAFCO, 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 LAFCO. This subsection shall survive termination of this Agreement.

21. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of City and County of San Francisco's Charter and §87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts, which constitute a violation of said provisions.

22. Proprietary or Confidential Information of LAFCO

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 LAFCO and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to LAFCO. Contractor agrees that all information disclosed by LAFCO to Contractor shall be held in confidence and used only in 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.

23. 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 LAFCO: Ms. Nancy C. Miller
Executive Officer
SF LAFCO
1 Dr. Carlton B. Goodlett Place Room 244
San Francisco, CA 94102
Email: miller@motlaw.com
Phone: 415-554-5184
Fax: 415-554-5163

To Contractor:

24. Ownership of Results

Any interest of Contractor or its Subcontractors, in 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 LAFCO. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

25. 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 LAFCO. 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 LAFCO, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the LAFCO, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

26. Audits and Inspection of Records

Contractor agrees to maintain and make available to the LAFCO, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit LAFCO 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 three 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 LAFCO by this Section.

27. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by LAFCO 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.

Local Business Enterprise Utilization; Liquidated Damages

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

b. Compliance and Enforcement

(1) 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 LAFCo'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 LAFCo 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 LAFCo 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 LAFCo.

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.

(2) Subcontracting Goals

The LBE subcontracting participation goal for this contract is 5%. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to LAFCo for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle LAFCo to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor.

Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

(3) Subcontract Language Requirements

Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors.

Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(4) Payment of Subcontractors

Contractor shall pay its subcontractors within three working days after receiving payment from LAFCo unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from LAFCo that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount.

Contractor further agrees, within ten working days following receipt of payment from the LAFCo, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

28. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, LAFCo and San Francisco 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 LAFCo 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 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.

29. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, LAFCo urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. LAFCo 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.

30. Tropical Hardwood and Virgin Redwood Ban

Pursuant to §804(b) of the San Francisco Environment Code, LAFCo 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.

31. 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 LAFCo 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.

32. 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.

33. 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.

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

35. 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.

36. 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).

37. 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.

38. 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.

39. Construction

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

40. 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.

41. 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.

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

43. Left Blank by Agreement of the Parties ("Supervision of Minors")

44. 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.

45. 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.

46. 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 LAFCo'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.).

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

47. 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, LAFCo 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 LAFCo 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 LAFCo because of Contractor's failure to comply with this provision.

48. Left Blank by Agreement of the Parties (“Slavery Era Disclosure”)

49. 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 LAFCO by written instrument executed and approved in the same manner as this Agreement.

50. 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.

51. 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 LAFCO 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.

52. 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 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.

53. Sunshine Ordinance

In accordance with LAFCO policy, the provisions of S.F. Administrative Code §67.24(e) shall apply and, contracts, contractors’ bids, responses to solicitations and all other records of communications between LAFCO 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.

Studies, documents and reports produced by Contractor at the direction of the Board of Supervisors shall be owned by the Board of Supervisors as specified in Section 26 of this agreement. Contractor agrees to assist the Board of Supervisors and the Clerk of the Board in responding to any public request for access to such documents and reports or related material.

54. 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%.

55. 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.

56. Agreement Made in California; Venue

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

57. Construction

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

58. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.

59. Compliance with Laws

Contractor shall keep itself fully informed of the LAFCO's Charter, codes, ordinances and regulations of the LAFCO 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.

60. 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.

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

LAFCO

CONTRACTOR

For LAFCO

Authorized Signature

Printed Name

Printed Name

Approved as to Form:

Title

LAFCO Attorney

Company Name

By _____
LAFCO Attorney

Address

State, ZIP

Phone Number

Federal Employer ID Number

APPENDICES

- A: Services to be Provided by Contractor
- B: Calculation of Charges
- C: Human Rights Commission Requirements and other standard provisions

Appendix A
Services to be Provided by Contractor

1. Description of Services

Services shall be provided by _____

Services shall include the following tasks:_____.

LAFCO agrees to furnish the Contractor, at no charge, records, data and other information which in the opinion of the Executive Officer are necessary for the performance of this Agreement; provided, however, that LAFCO shall not provide clerical or reproduction services or any other materials and supplies.

Contractor agrees not to remove any official documents from the office of LAFCO. All documents prepared by the Contractor in furtherance of this Agreement shall be delivered to the Executive Officer.

In performing the services provided for in this Agreement, Contractor's liaison with LAFCo will be:

Ms Nancy C. Miller
Executive Officer
SF LAFCO
1 Dr. Carlton B. Goodlett Place Room 244
San Francisco, CA 94102
Email: miller@motlaw.com
Phone: 415-554-5184
Fax: 415-554-5163

Appendix B Calculation of Charges

As part of Contractor's proposal, Contractor submitted a proposed Fee Schedule for the tasks described in Appendix B-1. The Contractor, with the assistance of the LAFCo, may be required to modify the Fee Schedule under this agreement. All costs associated with the development of the scope of work shall be borne by the Contractor.

As provided in the RFQ, the Fee Schedule may be modified and LAFCo reserves the right to do so as the contract is prepared for certification.

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or contractor who submits a false claim shall be liable to LAFCo for three times the amount of damages which LAFCo sustains because of the false claim. A contractor, subcontractor or contractor who submits a false claim shall also be liable to LAFCo for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to LAFCo for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or contractor will be deemed to have submitted a false claim to LAFCo if the contractor, subcontractor or contractor: (a) knowingly presents or causes to be presented to an officer or employee of LAFCo 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 LAFCo; (c) conspires to defraud LAFCo by getting a false claim allowed or paid by LAFCo; (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 LAFCo; or (e) is a beneficiary of an inadvertent submission of a false claim to LAFCo, subsequently discovers the falsity of the claim, and fails to disclose the false claim to LAFCo within a reasonable time after discovery of the false claim.

1. Fee Schedule and Billing Rates

Contractor's billing rates provided in the Fee Schedule, attached hereto as Appendix B-2 will be the billing rate for the listed individuals. Direct labor payroll rates may be adjusted annually. The amount of the adjustment is limited to a maximum of the CPI annual percent change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous year. The Effective Project Multiplier will apply to the billing rate of all individuals not listed in the Fee Schedule, including but not limited to substitute, unnamed staff, and subconsultants assigned later. The Effective Project Multiplier will apply to all contract Amendments. Contractor's billing rates are not subject to audit with respect to the makeup or composition of the rates but actual salary must be verifiable by certified payroll records. Adjustments for individual Contractor employees may exceed the maximum provided that the total adjustment dollars for Contractor employees dedicated to this contract does not exceed the maximum dollars based on the total direct salary paid on the contract for the previous year plus the CPI. In the event the maximum billing rate exceeds \$220/hour Contractor must obtain written pre-authorization by the SFPUC Project Manager and Bureau/Division Manager. Any adjustments would be made once per year, except those who are allowed to exceed the cap will keep the rate for the life of the contract.

The billing rate for each listed individual may not exceed the lowest rate charged to any other governmental entity except the City and County of San Francisco. Additionally, billing rates shall not exceed Federal Acquisition Regulations (FAR) or Generally Accepted Accounting Principles (GAAP) rate; whichever is applicable, if both, whichever is lowest.

- Direct Labor is limited to actual salaries of project personnel

2. Staff Changes

The SFPUC Project Manager must approve the assignment of staff prior to beginning a task order as well as any staff changes proposed by Contractor. The SFPUC Project Manager must also approve in writing any personnel changes proposed by Contractor after Notice to Proceed has been issued.

3. Additional Subcontractors

Second-tier and pass-through subcontracting is prohibited. However, in the event that the prime contractor and its approved subcontractors lack the necessary skills or expertise to perform requested services that are within the scope of the contract, additional subcontractors may be added to the contractor team after obtaining pre-authorization by the SFPUC Project Manager and Bureau/Division Manager. In such circumstances, the SFPUC or HRC Compliance Officer may suggest firms capable of performing the work and submit a proposal to the contractor.

4. Other Direct Costs (ODC)

Direct reimbursable expenses (ODC's – Other Direct Costs) shall include actual direct costs (with no mark up) of expenses directly incurred in performing the work. All ODCs are subject to pre-approval in writing by the SFPUC Project Manager.

The following items will be eligible for reimbursement as ODCs:

- Out-of-town travel (“out-of-town” shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, Solano).
 - Rental vehicle: traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented.
 - Personal vehicle use: Contractor will be paid per mile as established by the United State Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. Should the travel begin or end on a normal workday, the Contractor shall subtract commuting mileage from total mileage to calculate reimbursable mileage. The Contractor shall submit to the City an approved mileage log with its monthly invoices.
- Specialty printing (“specialty” as used herein shall mean large volume printing and color printing. Documentation of the written approval by the SFPUC must be included with the invoice);
- Specialty computer hardware and software. Documentation of the written approval by the SFPUC must be included with the invoice);
- Permit fees;
- Expedited courier services when requested by SFPUC staff;
- Special services, used solely for the benefit of this project and not performed by the Prime Contractor or by the Subcontractors, such as electrical testing, hazardous material testing, training, deliveries, diving services, office and field office setups and maintenance, and telephone and network installations and maintenance. Documentation of the written approval by the SFPUC must be included with the invoice.

Everything not listed above is not eligible for reimbursement and include but are not limited to:

- All other travel expenses such as parking, bridge tolls, public transit, vehicle mileage within the nine Bay Area Counties, travel from Contractor's home office to SFPUC facilities;
- Contractor staff relocation costs;
- Any labor charges or pass-throughs, including but not limited to, administrative and clerical staff time;
- Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software, communication devices, and electronic equipment;
- All meals, including refreshments and working lunches with SFPUC staff;

- Equipment to be used by SFPUC staff;
- Postage and courier services which are not requested by SFPUC staff; and
- Costs of preparing the proposal.

5. Subcontractor Fees

- Subject to above restrictions
- Shall be subject to written pre-approval by the SFPUC Project Manager
- Subcontractor administration markup is limited to *actual cost not to exceed 5%*

6. Retention

Five percent (5%) of each invoice payment will be withheld for each task order. When the work for the task order or defined critical milestones has been completed to the satisfaction of the SFPUC Project Manager and all work products have been received and approved by the SFPUC Project Manager, the Contractor may request that the retention be released. In lieu of money retention, an irrevocable letter of credit acceptable to the City will be accepted.

7. Invoice Requirements

The contractor shall submit one original invoice package with the appropriate HRC reporting forms and supporting documentation to substantiate services provided and allowable ODCs. Contractor will work with City Staff to establish an invoice format that will correlate with appropriate City scheduling software and will be used thereafter. Each invoice submission must include an HRC Form 7 to identify the participation and amount payable to the subcontractors. Timesheets, cards or logs must include a brief description of when and what work was performed memorializing the day's progress. Mileage logs must include the beginning and ending mileage to substantiate the variable portal-to-portal distance and local driving required while performing the work. Any "Other Direct Costs" must be substantiated with receipts including a brief description for each receipt memorializing the purpose. All invoices must include the contract number, the task number (and title, if applicable), document reference number and funding source number. Complete invoice packages should be sent directly to:

Ms. Linda Wong
 SF LAFCO
 1 Dr. Carlton B. Goodlett Place Room 244
 San Francisco, CA 94102

HRC Form 9 must be sent to the Contract Administration Bureau Payment Processing Unit within ten (10) days of receiving payment for each invoice to document the subcontractor's payment by the prime contractor.

HRC Form 8 must be sent to the Contract Administration Bureau Payment Processing Unit with the final invoice for each task order to authenticate the total subcontractor participation and close out the Purchase Order Release.

8. Audit

All costs submitted for payment by Contractor are subject to audit. In the event that an audit is conducted and the actual overhead and profit rates are less than those included in the Effective Project Multiplier, the Contractor will pay the cost of the audit and be subject to any applicable remedies available to the City as provided for in this Agreement and as available by law. In the event that an audit is conducted and the actual overhead and profit rates are equal to or greater than those included in the Effective Project Multiplier, the City shall pay for the cost of the audit.

Appendix B-1
Tasks

Appendix B-2
Billing Rates and Fee Schedule for Tasks