

**City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

Equipment Lease Attachment

This form is an attachment to the Agreement between the City and County of San Francisco (“City”) and _____ (“Lessor”), dated _____. The Terms and conditions of this attachment are referenced in and incorporated into the Agreement between the City and Lessor.

[Delete the recital paragraph if this contract falls under an exception to the RFP rule, such as if this contract is a sole source contract or it is for an amount less than \$110,000]

Recitals

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

NOW, THEREFORE, City and Lessor agree as follows:

- 1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the City’s Controller, and any amount of the City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year in the event funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated, and Lessor’s sole remedy shall be repossession of the equipment. This Section shall control against any and all other provisions of this Agreement.
- 2. Term of the Agreement.** Subject to Section 1, the term of this Agreement shall be from [insert beginning date] to [insert termination date].
- 3. No Automatic Renewal.** Notwithstanding anything to the contrary contained in this Lease (including, without limitation, any terms and conditions of Lessor attached hereto): (a) in no event shall the term of this Lease be longer than the initial term expressly stated in this Lease; (b) any automatic renewal or extension (whether or not conditioned upon any notice or absence thereof from either party) or any similar “evergreen” provision shall be deemed null and void ab initio; and (c) the term of this Lease shall not be extended or renewed except by written

agreement duly authorized, executed and delivered by City. In the event of any inconsistency within this Lease relating to the duration of the initial term hereof, the shorter initial term shall govern. If no initial term is stated in this Lease, then the term shall be one year from the date on which the term commences.

4. City's Payment Obligation. In no event will the City make an advance payment. In the event any payment of any amount of monies is required by any Vendor or Manufacturer prior to acceptance of the Equipment by the City, Lessor is to advance such amounts. The City will make a good faith effort to pay all invoices within thirty days of billing. In no event will the City pay any late fees or charges for payments made after the 30 day period. Lessor and the City understand and intend that the obligations of the City to pay Rental Payments hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City. The City shall pay Rental Payments, exclusively from legally available funds, to Lessor or, in the event of an authorized assignment by Lessor to its assignee, according to the terms of this Agreement, upon presentation of invoices furnished by Lessor in a form acceptable to the Controller. Each invoice must have a unique identifying number. Payments will be made in United States Dollars by warrant drawn on the Treasurer of City and County of San Francisco. Rental Payments shall be in consideration for the City's use of the Equipment during the applicable fiscal year in which such payments are due. In no event shall the amount of this Agreement exceed **[insert whole dollar amount in numbers and words – no pennies and no “.00”]**. The breakdown of costs associated with this Agreement appears in the agreement between City and Contractor, dated **[insert date]**, to which this Attachment is attached.

5. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

6. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. 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. Maintenance. The City shall be responsible for all service, repair and maintenance of the Equipment unless otherwise specified by this Agreement. The City, at its sole cost and expense, shall keep the Equipment in good operating order, repair, condition and appearance and shall furnish any and all parts, mechanisms or devices required to keep the Equipment in good mechanical and working order. If the City deems it necessary, the City shall enter into an appropriate maintenance service agreement covering all items of Equipment and shall maintain maintenance service on the Equipment for the Lease term, for which payment shall be due and payable by the City.

8. Use, Licenses. The City will not use or operate the Leased Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease.

9. Delivery of Equipment; Transportation. It is the responsibility of the Lessor to arrange with the manufacturer and/or vendor for the delivery [and any installation] of the equipment. Charges for delivery [and installation] are the responsibility of the Lessor. However, the City will reimburse Lessor for reasonable delivery [and installation] charges after the Leased Equipment is accepted and upon proper presentation of invoices unless such charges are included in the cost of the equipment. The equipment to be provided under this Lease is to be delivered to a location as designated by the City [and installed and made ready for operation].

10. Installation [if applicable – if not applicable, delete the paragraph and replace with “10. Reserved. (Installation)”] The Lessor will arrange with the manufacturer and/or vendor to prepare site, obtain all permits and licenses, if any, necessary for the installation and operation of the equipment, furnish, assemble and install the Equipment as necessary at the location as designated by the City. Manufacturer and/or vendor must comply with all State laws and local Ordinances in installing the Equipment.

11. Relocation of Equipment. Lessor agrees that the City may upon reasonable notice to Lessor, relocate the Equipment or any item or items thereof to any location or locations within the geographical boundaries of the City where the City has offices at the City’s sole discretion and cost. Prior to any such relocation the City agrees to execute or obtain and to deliver to Lessor such documents which Lessor reasonably requests to protect Lessor's right, title and interest in the Equipment.

12. Lessor's Removal and the City's Surrender of the Equipment. At the end of the lease term or unless sooner terminated, the City agrees to surrender the equipment in as good a condition as when furnished, reasonable wear and tear excepted. Lessor agrees, at Lessor’s cost to accept and remove the Equipment as provided in this Lease. Lessor’s failure to accept and remove the Equipment shall entitle the City to remove the Equipment and place it in any storage facility in San Francisco at Lessor’s sole expense and Lessor shall hold the City free and harmless from any expense or damages of any kind occasioned thereby and arising therefrom.

13. Default. In the event of a default by Lessor under this Lease, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Lease. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Lessor any default by Lessor. Lessor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Lessor under this Lease all damages, losses, costs or expenses incurred by City as a result of such default by Lessor.

14. Force Majeure. Lessor shall not be liable for failure to furnish Equipment ready for use on the date specified or to remove in accordance with the terms of this Lease nor shall City be liable for delay in installation or removal when such failures are due to causes beyond the reasonable control of either such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities, and in such event the party under obligations to perform shall perform as soon as such cause is removed.

15. The City's Right to Use Other Equipment Simultaneously with the Equipment. The City does not grant Lessor an exclusive right during the term of this Lease to supply the City with any other equipment. The City reserves the right to lease or purchase similar or different equipment from any other supplier or lessors which may be used contemporaneously with any item of Equipment leased hereunder.

16. Disclaimer of Warranties. Lessor hereby assigns to the City for and during the Lease Term, to the extent permitted by law, all Manufacturer's or Vendor's warranties or guaranties, express or implied, issued on or applicable to the Leased Equipment, and Lessor authorizes the City to obtain the customary services furnished in connection with such warranties or guaranties at the City's expense. Lessor authorizes the City, to the extent permitted by law, to enforce in its own name any warranty, representation or other claim enforceable against the manufacturer or vendor. The City acknowledges that the Equipment has been purchased by Lessor on behalf of the City in accordance with the City's specifications. The City shall look directly to the Manufacturer or Vendor for any warranties or any service for the equipment.

17. Indemnification. Lessor 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 Lessor or loss of or damage to property, arising directly or indirectly from Lessor's performance of this Agreement, including, but not limited to, Lessor'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 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 Lessor, 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 Lessor's obligation to indemnify City, Lessor 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 Lessor by City and continues at all times thereafter. Lessor shall indemnify and hold City harmless from all loss and liability, including attorney's 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 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

18. Enjoyment of the Equipment. Provided that and so long as the City is not in default under this Lease, Lessor hereby covenants to provide the City during the Lease Term with quiet use and enjoyment of the Equipment, and the City shall during the Lease Term peaceably and quietly have and hold and enjoy the equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Lease. Any assignee of Lessor shall not interfere with the City's quiet use and enjoyment during the Lease Term so long as the City is not in default pursuant to this Lease.

19. Title to the Equipment. Title to the Equipment and any and all additions, repairs, replacements or modifications thereto shall be held in the name of Lessor, and the City shall have no right, title or interest in the Equipment or any additions, repairs, replacements or modifications thereto except as expressly set forth in the Lease.

20. Liability for Damage to Equipment. It is understood and agreed that the City is responsible for loss of or damage to any Lessor owned equipment involved, only as caused by the negligent or wrongful actions of City's officers, agents and employees.

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

22. 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:

➔ **The following types and amounts of insurance are those most commonly required in City contracts, but departments should tailor the types and amounts of insurance to the particular risks of each contractor's services. For example, if the contractor would deliver fuel, transport hazardous waste, or operate aircraft, higher policy limits would be**

necessary. Please contact the City's Risk Manager with specific questions, and do this early in the contracting process, such as before a bid or RFP is made public.

Any reductions below these coverages require the approval of the City's Risk Manager.

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; 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 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. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

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

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 22 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.

23. Provisions Controlling. Lessor further agrees that in the event of conflicting language between this "Equipment Lease Attachment" and Lessor's printed form, this "Equipment Lease Attachment" shall take precedence.

24. Lessor's Default. Failure or refusal of Lessor to perform or do any act herein required shall constitute a default. In the event of any default, in addition to any other remedy available to the City, this Contract may be terminated by the City upon ten days' written notice. Such termination does not waive any other legal remedies available to the City.

25. Taxes. The City will only pay California sales and use taxes. The Lessor is to add California sales and use taxes to the monthly payment and the tax must be properly identified on each monthly invoice. Any other taxes presently in effect which may be levied upon this Agreement, the transaction, or the Equipment or services delivered pursuant hereto shall be borne by the Lessor. The Lessor will be responsible for all property taxes. In the event any taxes or charges are enacted after the date of execution of this Lease Agreement, those taxes or charges shall be borne as mutually agreed. The Lessor will indemnify and hold City harmless from any fines, penalties or interest thereon imposed during the Lease term or in connection with termination of the lease by any federal, State or local government or taxing authority. The taxes covered by this Section shall only include those attributable to the equipment. Under no circumstances will the City pay any taxes imposed on, based on, or measured by the net income of the Lessor.

26. Assignment. Notwithstanding any other provision in this lease, in no event shall all or any portion of this lease be assigned without the prior written approval of Purchasing and the City Attorney. Furthermore, in no event shall Lessor effect a public offering of certificates of participation, municipal securities or other debt instruments presenting fractionalized interests in this lease. For purposes of this Section, a public offering shall occur when the certificates of participation, municipal securities or other debt instruments are either: (a) offered or sold to more than twenty investors; or, (b) offered or sold in denominations of less than \$10,000.

27. Reserved

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

To City: **[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]**

Any notice of default must be sent by registered mail.

29. Section Headings. All section headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Lease.

30. Waiver. The waiver by either party of any breach by either party of any term, covenant or conditions hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

31. Governing Law. This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of California.

32. Entire Agreement; Modifications. The Lease, together with the Appendices hereto, constitutes the entire Agreement between the parties and this Lease shall not be modified, amended, altered or changed except in writing as herein provided. All agreements between the parties are included herein and no promises or statements have been made by either party unless endorsed hereon in writing. No change or waiver of any provisions hereof shall be valid unless made in writing with the consent of both parties and executed in the same manner as this Lease. Any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease. Subject to the specific provisions of this Lease, this Lease shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

33. Nondiscrimination; Penalties

a. Lessor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or

against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

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

c. Nondiscrimination in Benefits. Lessor 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 or where work is being performed for the City or elsewhere within 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 Section 12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract. As a condition to this Agreement, Lessor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form CMD-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. Lessor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Lessor 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 Lessor and/or deducted from any payments due Lessor.

34. EIC Forms. Reserved.

35. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to

abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

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

37. 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.

38. 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 contract. 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 contract, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

39. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, responses to RFPs and all other records of

communications between City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

40. 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 the 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.

41. Compliance with Laws. Lessor 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.

42. 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.

43. Sugar-Sweetened Beverage Prohibition. Contractor agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

44. 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.

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.

DRAFT

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

CITY	CONTRACTOR
<p>Recommended by:</p> <hr/> <p>[name] [title] [department]</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ [insert name of Deputy City Attorney]</p> <p>Deputy City Attorney</p> <p>Approved:</p> <hr/> <p>Sailaja Kurella Acting Director of the Office of Contract Administration, and Purchaser</p>	<p>[company name]</p> <p>I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <hr/> <p>[name of authorized representative] [title] [optional: company name] [optional: address] [optional: city, state, ZIP]</p> <p>City vendor number: [vendor number]</p>