

**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**

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“Assignment”) is made as of **[insert date]**, in San Francisco, California, by and between **[insert name of Assignor]**, a corporation duly organized and existing under the laws of **[insert State]** with its principal office in **[insert city]** (“Assignor”), **[insert name of Assignee]**, a corporation duly organized and existing under the laws of **[insert State]** with its principal office in **[insert city]** (“Assignee”), and City and County of San Francisco, a municipal corporation (“City”).

Recitals

WHEREAS, Assignor is a party to the Agreement (as defined below); and

WHEREAS, Assignor desires to transfer the Agreement, and Assignee desires to assume the Agreement, each on the terms and conditions set forth herein; and

WHEREAS, Assignor warrants that Assignee is able to fully perform all obligations that may exist under the Agreement, and

WHEREAS, Assignee warrants that it is able to fully perform all obligations that may exist under the Agreement, and

WHEREAS, It is consistent with the City’s interest to recognize the Assignee as the successor party to the Agreement, and

WHEREAS, the City consents to the transfer of the Agreement based on Assignor’s warranties stated herein and under the terms below.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Assignment, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

Article 1 Definitions

The following definitions apply to this Assignment:

1.1 “Agreement”

“Agreement” means the agreement dated **[insert date of Agreement]** between Assignor and City and County of San Francisco, a municipal corporation **[use the rest of the sentence if applicable]**, as amended by the first amendment of **[insert date of amendment, the second**

etc.]. The Agreement and any amendments or modifications [is/are] attached to this Assignment as Appendix A.

“Agreement” means the Agreement dated [insert date of Contract] between [insert name of party to original Contract] (the “Original Contractor”) and City and County of San Francisco, a municipal corporation, as transferred by an Assignment dated [insert date of transfer] between the Original Contractor and [Assignor or insert name of first Assignee of original contractor], [insert the following as necessary if there is more than one transfer] as further transferred by a transfer dated [insert date of transfer] between [insert name of the most recent Assignor] and Assignor. The term “Agreement” also encompasses the first amendment of [insert date of amendment], [the second etc.]. The Agreement and any amendments or modifications [is/are] attached to this Assignment as Appendix A.

1.2 “Effective Date” means [the first day in which the Assignor is obligated to perform the services and assumes obligations as prescribed in the Agreement].

1.3 Other terms used and not defined in this Assignment shall have the meanings assigned to such terms in the Agreement.

Article 2 Transfer of Agreement

2.1 **Transfer.** Assignor hereby assigns, transfers and conveys to Assignee all of Assignor’s rights, title, and interest in and to the Agreement and all of Assignor’s duties and obligations thereunder that will arise on or after the Effective Date.

2.2 **Acceptance.** Assignee hereby accepts the transfer and conveyance set forth in Article 2.1 and agrees to perform all of Assignor’s duties and obligations under the Agreement that will arise on or after the Effective Date.

2.3 **Rights to Enforce.** Subject to the terms of the Agreement, this Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their successors and transferees. Nothing in this Assignment, whether express or implied, shall be construed to give any person or entity (other than City and the parties hereto and their respective successors and Assignees) any legal or equitable right, remedy or claim under or in respect of this Assignment or any covenants, conditions or provisions contained herein.

2.4 **Consent of City.** The City consents to the transfer described in this Article 2 based on the evidence provided below, which indicates that Assignee is able to fully perform all obligations that may and will exist under the Agreement. All the evidence is attached to this Assignment as Appendix B. Further, each of Assignor and Assignee acknowledges that the prior written consent of City to this Assignment is required under the terms of the Agreement. City shall have the right to enforce this Assignment.

2.4.1 An authenticated copy of instrument effecting the transaction between the Assignor and Assignee, together with attorney opinion letters with a statement that the transaction was properly affected under the applicable state law.

2.4.2 Additional documents required, depending on the nature of the transfer:

a. A certificate dated [insert date], signed by the Secretary of State of [insert State], to the effect that Transferor merged into the Transferee and the Transferee is the surviving corporation as of [insert date];

b. A signed and authenticated document or excerpts of a document describing the proposed transaction, which precisely describes the specifics of the transactional relationship, including the description of all the transfers of the assets used to perform the Agreement, between the Transferor and Transferee;

c. The Opinion of the Corporate Secretary for Transferee, dated [insert date], opining that [insert type of agreement, i.e. merger, stock purchase] agreement was properly affected under applicable law and that the Transferee controls the company and employees, and is able to assume all liabilities and obligations of the Agreement as set forth above;

d. Certified copies of Board Resolutions and Stockholders Meetings Minutes authorizing and approving transfer of assets, both for the Transferor and Transferee.

2.4.3 An authenticated copy of the Transferee's certificate and articles of incorporation.

2.4.4 Balance sheets for the Assignee with independent auditor report if available to prove that the Assignee has enough assets to perform the Agreement.

2.4.5 A statement by the Assignee to confirm that the price and the personnel of the Agreement will remain unchanged.

2.5 **Successor.** The City recognizes the Assignee as the Assignor's successor in interest in and to the Agreement. The Assignee by this Assignment becomes liable for all responsibilities and entitled to all rights, titles, and interests of the Assignor in and to the Agreement that will arise on or after the Effective Date. The City will treat the Assignee as if the Assignee were the original party to the Agreement. Following the Effective Date of this Assignment, the term "Contractor," as used in the Agreement, shall refer to the Assignee. The Agreement shall remain in full force and effect, except as modified by this Assignment. Each party has executed this Assignment as of the day and year first above written.

2.6 **Further Assurances.** From and after the date of this Assignment, Assignor and Assignee agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the conveyance contemplated by this Assignment or as may be required by City.

Article 3 Obligations and Liabilities

3.1 **Transfer, Waiver, and Assumption.** The Assignor confirms the transfer to the Assignee, and waives any claims and rights against the City that it now has or may have in the future in connection with the Agreement. The Assignee agrees to be bound by and to perform the Agreement in accordance with the conditions contained therein. The Assignee also assumes all obligations and liabilities of, and all claims against, the Assignor under the Agreement as if the Assignee were the original party to the Agreement. The Assignee ratifies all previous actions taken by the Assignor with respect to the Agreement, with the same force and effect as if the

action has been taken by the Assignee. Except as expressly provided in this Assignment, nothing in it shall be construed as a waiver of any rights of the City against the Assignor.

3.2 Past Payments. All payments and reimbursements previously made by City to the Assignor, and all other previous actions taken by City under the Agreement, shall be considered to have discharged those parts of City's obligations thereunder. All payments and reimbursements made by City after the date of this Assignment in the name of or to the Assignor shall have the same force and effect as if made to the Assignee, and shall constitute a complete discharge of City's obligations under the Agreement, to the extent of the amounts paid or reimbursed. The Assignor and the Assignee agree and confirm that City is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer of this Assignment, other than those that City in the absence of this transfer would have been obligated to pay or reimburse under the terms of the Agreement.

3.3 Future Obligations. The Assignor guarantees payment of all liabilities and the performance of all obligations that the Assignee: (i) assumes under this Assignment; or (ii) may undertake in the future should this Assignment be modified pursuant to the Contract's terms and conditions. The Assignor waives notice of, and consents to, any such future modifications. Further transfers of the liabilities under the Agreement done by the Assignee and agreed upon by City do not release the Assignor from its guarantee.

3.4 No Release of Assignor. Neither this Assignment, nor the consent of City, shall release Assignor in whole or in part from any of its obligations or duties under the Agreement if Assignee fails to perform or observe any such obligation or duty. Assignor has entered into this Assignment and obtained such consent of City based solely upon Assignor's independent investigation of Assignee's financial condition and ability to perform under the Agreement, and Assignor assumes full responsibility for obtaining and sharing with City any further information with respect to Assignee or the conduct of its business after the date of this Assignment. Assignor waives any right to require City to (i) proceed against any person or entity including Assignee, (ii) proceed against or exhaust any security now or hereafter held in connection with the Contract, or (iii) pursue any other remedy in City's power. Assignor waives any defense arising by reason of any disability or other defense of Assignee or any other person, or by reason of the cessation from any cause whatsoever of the liability of Assignee or any other person. Assignor shall not have and hereby waives any right of subrogation to any of the rights of City against Assignee or any other person and Assignor waives any right to enforce any remedy of Assignor against Assignee or against any other person unless and until all obligations to City under the Agreement and this Assignment have been paid and satisfied in full. Assignor waives any benefit of any right to participate in any collateral or security whatsoever now or hereafter held by City with respect to the obligations under the Agreement.

Article 4 Insurance and Indemnification

4.1 Insurance Certificates. For this Assignment to be effective, Assignee shall provide to City insurance certificates and endorsements for the identical type and amount of coverage currently required under the Agreement.

4.2 **City.** Assignor and Assignee shall, to the fullest extent permitted by law, indemnify, defend and protect City, and hold City harmless from and against any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of Assignor and/or Assignee's failure to comply with any term or obligation of this Assignment or the Agreement. Defense obligations under this Section 4.2 shall be provided immediately following a tender of defense.

4.3 **Assignor.** Assignor shall indemnify, defend and protect Assignee, and hold Assignee harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of (i) any failure of Assignor to convey its interest pursuant to Article 2, free and clear of all third-party liens, claims or encumbrances or (ii) any breach by Assignor of the Agreement or any other failure to perform or observe any of the duties or obligations of Assignor thereunder, to the extent such breach or failure arises prior to the Effective Date.

4.4 **Assignee.** Assignee shall indemnify, defend and protect Assignor, and hold Assignor harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of any breach by Assignee of the Agreement or any other failure to perform or observe any of the duties or obligations thereunder assumed by Assignee pursuant to this Assignment.

Article 5 General Provisions

5.1 **Governing Law.** This Assignment shall be governed by the laws of the State of California, without regard to its conflict of laws principles.

5.2 **Headings.** All Section headings and captions contained in this Assignment are for reference only and shall not be considered in construing this Assignment.

5.3 **Notices.** All notices, consents, directions, approvals, instructions, requests and other communications regarding this Assignment or the Agreement shall be in writing, shall be addressed to the person and address set forth below and shall be (i) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (ii) hand delivered or (iii) sent via email with a return receipt. All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time Assignor, Assignee or City may designate a new address for purposes of this Section by notice to the other signatories to this Assignment.

If to Assignor:

[Insert name of Assignor, Name of Contact Person, mailing address, and e-mail address]

If to Assignee:

[Insert name of Assignee, Name of Contact Person, mailing address, and e-mail address]

If to City:

[Insert name or title of department contact person, name of department, mailing address, and e-mail address]

5.4 **Entire Agreement.** This Assignment sets forth the entire agreement between Assignor and Assignee relating to the Agreement and supersedes all other oral or written provisions.

5.5 **Severability.** Should the application of any word, phrase, clause, sentence, paragraph and/or provision of this Assignment to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other words, phrases, clauses, sentences, paragraphs and/or provisions of this Assignment shall not be affected or impaired thereby and (ii) such words, phrases, clauses, sentences, paragraphs and/or provisions shall be enforced to the maximum extent possible so as to effect the intent of Assignor, Assignee and City.

IN WITNESS WHEREOF, Assignor and Assignee have each duly executed this Assignment as of the date first referenced above.

ASSIGNOR

ASSIGNEE

[INSERT NAME OF ASSIGNOR]
[INSERT CITY SUPPLIER NUMBER]

[INSERT NAME OF ASSIGNEE]
[INSERT CITY SUPPLIER NUMBER]

By

By

Title

Title

City hereby consents to the assignment and assumption described in Article 2 of this Assignment.

Recommended by:

Approved:

Sailaja Kurella
Acting Director of the Office
of Contract Administration,
and Purchaser

Signature for Department

Name:

Title :

Department:

By:

[name of Purchaser or
"Name:_____"]

Approved as to Form:

Dennis J. Herrera
City Attorney

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

Attached:

Appendix A: Agreement

Appendix B: Documentation of Transfer

APPENDIX A - Agreement

The Agreement dated **[insert date of Contract]** between Contractor and City, as amended by the:

[First amendment], dated **[insert date of the first amendment]**, and
[Second amendment], dated **[insert date of second amendment]**.

is attached on the following pages.

APPENDIX B – Documentation of Transfer