

Sourcing Event 000005676
Attachment 1
Proposed Agreement Terms

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

Agreement between the City and County of San Francisco and

**[Insert name of contractor]
Dept Contract ID: RM-CDP-7-2021**

This Agreement is made this [insert day] day of [insert month], [insert year], in the City and County of San Francisco (“City”), State of California, by and between [name and address of Contractor] (“Contractor”) and City.

Recitals

WHEREAS, the Risk Management Division (“Department”) wishes to provide Administrative Services for the Program Administrator/Service for the Bonding and Financial Assistance Program also known as the Contractor Development Program and

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposal (“RFP”) issued on July 2021, in which City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, the Local Business Enterprise (“LBE”) subcontracting participation requirement for this Agreement is 15 %; and

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

WHEREAS, the City’s Civil Service Commission approved Contract number [insert PSC number] on [insert date of Civil Service Commission action]; and

WHEREAS, the City’s [name of Commission or Board of Supervisors] approved this Agreement by [insert resolution number] on [insert date of Commission or Board action].

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Agreement” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and Risk Management Division

1.3 “City Data” means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

1.4 “CMD” means the Contract Monitoring Division of the City.

1.5 “Confidential Information” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

1.6 “Contractor” or “Consultant” means [insert name and address of contractor].

1.7 “Deliverables” means Contractor’s work product resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

1.8 “Mandatory City Requirements” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.9 “Party” and “Parties” means the City and Contractor either collectively or individually.

1.10 “Services” means the work performed by Contractor under this Agreement as specifically described in the “Scope of Services” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on October 1, 2021 and expire on September 30, 2024, unless earlier terminated as otherwise provided herein.

2.2 The City has 1 option to renew the Agreement for a period of 3 years. The City may extend this Agreement beyond the expiration date by exercising an option at the City’s sole

and absolute discretion and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 Guaranteed Maximum Costs. The City’s payment obligation to Contractor cannot at any time exceed the amount certified by City’s Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, “Modification of this Agreement.”

3.3 Compensation.

3.3.1 Calculation of Charges. Contractor shall provide an invoice to the City on a monthly basis for goods delivered and/or Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, “Calculation of Charges.” Compensation shall be made for goods and/or Services identified in the invoice that the City, in his or her sole discretion, concludes has been satisfactorily performed. In no event shall the amount of this Agreement exceed \$6,000,000 (six million dollars) – with an annual not to exceed amount of \$135,000. The breakdown of charges associated with this Agreement appears in Appendix B, “Calculation of Charges.” A portion of payment may be withheld until conclusion of the Agreement if agreed to by both Parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any services covered by this Agreement.

3.3.2 Payment Limited to Satisfactory Services and Delivery of Goods. Contractor is not entitled to any payments from City until City approves the goods and/or Services delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory delivery of goods and/or Services even if

the unsatisfactory character may not have been apparent or detected at the time such payment was made. Goods and/or Services delivered pursuant to this Agreement that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.3 Withhold Payments. If Contractor fails to provide goods and/or Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.7, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of goods delivered or Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.5 Payment Terms.

(a) **Payment Due Date:** Unless City notifies the Contractor that a dispute exists, Payment shall be made within 30 calendar days, measured from (1) the delivery of goods and/or the rendering of services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted electronic payment to Contractor.

(b) **RESERVED - Payment Discount Terms:**

(c) No additional charge shall accrue against City in the event City does not make payment within any time specified by Contractor.

3.3.6 LBE Payment and Utilization Tracking System. Contractor shall pay LBE subcontractors within three business days as provided under Chapter 14B.7(H)(9). Within ten business days of City's payment of an invoice, Contractor shall confirm that all subcontractors have been paid in the Payment Module of the City's Supplier Portal unless instructed otherwise by CMD. Failure to submit all required payment information to the City's Financial System with each payment request may result in the withholding of 20% of the payment due. Self-Service Training is located at this link:
<https://sfcitypartnersfgov.org/pages/training.aspx>.

3.3.7 Getting paid by the City for Goods and/or Services.

(a) The City and County of San Francisco utilizes the Paymode-X[®] service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit http://portal.paymode.com/city_countyofsanfrancisco.

(b) At the option of the City, Contractor may be required to submit invoices directly in the City's financial and procurement system (PeopleSoft) via eSettlement. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information on

eSettlement. For access to PeopleSoft eSettlement, submit a request through sfemployeeportalsupport@sfgov.org.

3.3.8 **RESERVED - Grant Funded Contracts.**

3.4 **Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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.

3.6 **RESERVED - Payment of Prevailing Wages**

Article 4 Services and Resources

4.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.2 **Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's

request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 **Subcontracting.**

4.3.1 Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 “Additional Requirements Incorporated by Reference” of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.3.2 City’s execution of this Agreement constitutes its approval of the subcontractors listed below.

[Insert names of desired approved subcontractors here]

4.4 **Independent Contractor; Payment of Employment Taxes and Other Expenses.**

4.4.1 **Independent Contractor.** For the purposes of this Section 4.4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this Section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 **Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this Section.

4.5 **Assignment.** The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

4.6 **Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

4.7 **Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the Services are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the sum of **[insert whole dollar amount in words and numbers -- no pennies and no ".00"]** per calendar day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this Agreement was awarded. City may deduct a sum representing the liquidated damages from any

money due to Contractor under this Agreement or any other contract between City and Contractor. Such deductions shall not be considered a penalty, but rather agreed upon monetary damages sustained by City because of Contractor's failure to furnish deliverables to City within the time fixed or such extensions of time permitted in writing by City.

4.8 **Bonding Requirements.** The Contractor is required to furnish a performance bond on the form in a form acceptable to the City, in a sum of not less than [insert bonding level] of the annual amount of the contract to guarantee the faithful performance of this contract. The bond must be approved as to sufficiency and qualifications of the surety by the Controller.

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 **Required Coverages.** 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:

(a) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) 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.

(c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than **\$1,000,000** each accident, injury, or illness.

(d) Professional Liability Insurance, applicable to Contractor's profession, with limits not less than **\$1,000,000** for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Fidelity Bond - Contractor shall maintain throughout the term of this contract, at no expense to City, a blanket fidelity bond or a Crime Policy (Employee Dishonesty Coverage) that includes coverage for employee dishonesty, forgery & alteration, theft of money & securities, and theft via electronic means, endorsed to cover third party fidelity, covering all officers and employees in an amount not less than Three Hundred Thousand Dollars, than \$300,000 with any deductible not to exceed \$10,000 and including City as additional obligee or loss payee as its interest may appear.

(f) Technology Errors and Omissions Liability coverage, with limits of **\$1,000,000** for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the Agreement and shall also provide coverage for the following risks:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

(g) Cyber and Privacy Insurance with limits of not less than **\$1,000,000** per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

5.1.2 Additional Insured Endorsements

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) RESERVED.

5.1.3 Waiver of Subrogation Endorsements

(a) The Workers' Compensation policy(ies) 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.

5.1.4 Primary Insurance Endorsements

(a) The Commercial General Liability policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) RESERVED.

5.1.5 Other Insurance Requirements

(a) Thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 entitled "Notices to the Parties."

(b) 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 Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) 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.

(d) 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.

(e) Before commencing any Services, 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. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

5.2 Indemnification. Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if

the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 Liability for Use of Equipment. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 Liability for 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.

Article 7 Payment of Taxes

7.1 Contractor to Pay All Taxes. Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Possessory Interest Taxes. Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 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.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code Section 480.5, as amended from time to time, and any successor provision.

7.2.3 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.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At City’s direction, assigning to City any or all of Contractor’s right, title, and interest under the orders and subcontracts terminated. Upon such assignment,

City shall 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.

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

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

(f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

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

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the Services or other work.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under 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 Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of

the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 City’s payment obligation under this Section shall survive termination of this Agreement.

8.2 Termination for Default; Remedies.

8.2.1 Each of the following shall constitute an immediate event of default (“Event of Default”) under this Agreement:

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

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment	10.13	Working with Minors
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) 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; (iii) makes an assignment for the benefit of its creditors; (iv) 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 (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) 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, (ii) 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 (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of

Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City. This Section 8.2.2 shall survive termination of this Agreement.

8.2.3 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. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.3 **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.

8.4 **Rights and Duties upon Termination or Expiration.**

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	9.1	Ownership of Results
3.3.7(a)	Grant Funded Contracts – Disallowance	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	Article 13	Data and Security

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver

in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights In Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, 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 shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/ .

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 **Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate

in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements.

10.5.1 Nondiscrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor 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 and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least 15% of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor’s LBE subcontracting commitments.

10.7 Minimum Compensation Ordinance. If Administrative Code Chapter 12P applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>.

Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

10.8 Health Care Accountability Ordinance. If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.9 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. 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 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126

by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Slavery Era Disclosure. Contractor shall comply with San Francisco Administrative Code Chapter 12Y, San Francisco Slavery Era Disclosure Ordinance, including but not limited to Contractor’s affirmative duty to research and disclose evidence of Contractor, its parent or subsidiary entity, or its Predecessor Company’s Participation in the Slave Trade or receipt of Profits from the Slave Trade. Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.

10.13 RESERVED - Working with Minors.

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Public Access to Nonprofit Records and Meetings. If Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor must comply with the City’s Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

10.16 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

Article 11 General Provisions

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

To City: **Maria-Zenaida Camua Madayag**
Risk Management Division
25 Van Ness Avenue, Suite 750
San Francisco, CA 94102
maria-zenaida.camua@sfgov.org

To Contractor: **[insert name of contractor, mailing address, and e-mail address]**

Any notice of default must be sent by registered mail or other trackable overnight mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Americans with Disabilities Act. Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 Incorporation of Recitals. The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and 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 CMD 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% (CMD Contract Modification Form).

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of

the City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

11.6.2 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.7 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.

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

11.9 Entire Agreement. This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules 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.

11.11 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 (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) 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.

11.12 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of City and Contractor, 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.

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated [Insert Date of Proposal]. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's

printed terms attached, the City’s terms shall take precedence, followed by the procurement issued by the department, Contractor’s proposal, and Contractor’s printed terms, respectively.

11.14 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests (“Legal Requests”) related to all data given to Contractor by City in the performance of this Agreement (“City Data” or “Data”), or which in any way might reasonably require access to City’s Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City’s instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

Article 12 Department Specific Terms

12.1 Reserved.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 Protection of Private Information. If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 Confidential Information. In the performance of Services, Contractor may have access to, or collect on City’s behalf, City’s proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City’s behalf, such information must be held by Contractor in confidence and used only in performing 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 or Confidential Information.

13.2 Payment Card Industry (“PCI”) Requirements. Contractors providing services and products that handle, transmit or store cardholder data, are subject to the following requirements:

13.2.1 Applications shall be compliant with the Payment Application Data Security Standard (PA-DSS) and validated by a Payment Application Qualified Security Assessor (PA-QSA). A Contractor whose application has achieved PA-DSS certification must then be listed on the PCI Councils list of PA-DSS approved and validated payment applications.

13.2.2 Gateway providers shall have appropriate Payment Card Industry Data Security Standards (PCI DSS) certification as service providers

(<https://www.pcisecuritystandards.org/index.shtml>). Compliance with the PCI DSS shall be achieved through a third party audit process. The Contractor shall comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs.

13.2.3 For any Contractor that processes PIN Debit Cards, payment card devices supplied by Contractor shall be validated against the PCI Council PIN Transaction Security (PTS) program.

13.2.4 For items 13.2.1 to 13.2.3 above, Contractor shall provide a letter from their qualified security assessor (QSA) affirming their compliance and current PCI or PTS compliance certificate.

13.2.5 Contractor shall be responsible for furnishing City with an updated PCI compliance certificate 30 calendar days prior to its expiration.

13.2.6 Bank Accounts. Collections that represent funds belonging to the City and County of San Francisco shall be deposited, without detour to a third party's bank account, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector.

13.3 **RESERVED - Business Associate Agreement.**

13.4 **Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City.

13.5 **Management of City Data and Confidential Information.**

13.5.1 **Use of City Data and Confidential Information.** Contractor agrees to hold City's Data received from, or collected on behalf of, the City, in strictest confidence. Contractor shall not use or disclose City's Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Data outside the United States is subject to prior written authorization by the City. Access to City's Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.5.2 **Disposition of Confidential Information.** Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all data given to or collected by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance

of this Agreement, including its subcontractors environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by “clearing,” “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

Article 14 MacBride And Signature

14.1 **MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

CITY

CONTRACTOR

Recommended by:

[company name]

[name]
[title]
[department]

[name of authorized representative]
[title]
[optional: address]
[optional: city, state, ZIP]

City Supplier Number: **[Supplier Number]**

Approved as to Form:

Dennis J. Herrera
City Attorney

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

Appendices

- A: Scope of Services
- B: Calculation of Charges

**Appendix A
Scope of Services
(SEE ATTACHED)**

Contractor Development Program

Appendix A

Scope of Services

1. **Description of Services**

Contractor agrees to perform the following Services: (See Attached)

2. **Services Provided by Attorneys.** Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

3. **Reports.** Contractor shall ensure that all data related to the Contractor Development Program (“CDP”) is entered and up to date in the City and County of San Francisco (“CCSF”)’s assigned technology platform, so that the Risk Management Division (“RMD”) can provide accurate and timely reports to the Board of Supervisors. The data entry and use of the CCSF’s assigned technology platform is required, necessary and shall be a material condition of this Agreement. Accurate and day to day data entry may be a condition of timely progress payments from the CCSF to Contractor for services rendered.

Contractor also responsible for entering payment data (including sub-consultant payment data into the CCSF’s Procurement and Financial Systems (“FSP”) E-Settlements module.

4. **Department Liaison**

In performing the services provided for this Agreement, Contractor’s liaison with the **Risk Management Division** will be **Director or designee**.

5. **Technology** – Contractor agrees to track, manage and produce reports on the CDP Program using the CDP Program Management Technology Solution developed by CCSF Department of Technology leveraging the power and flexibility of the Salesforce App Cloud based platform.

- The platform aims to assist RMD with the creation of a solution that will support the CCSF’s CDP.
- The platform will enable RMD, Contract Monitoring Division (“CMD”) and Contractor to easily monitor and analyze the CDP’s overall performance.
- The platform will enable the RMD and CMD to provide accurate and timely reports on the progress of the program to all stakeholders including the Board of Supervisors and the San Francisco Community Investment Fund (“SFCIF”) Board.

Contractor also agrees to upload all current contractor data into the database and continue the use of the platform going forward.

Contractor also agrees to utilize the CCSF’s Procurement and Financial system (“FSP”) in terms of documenting its compliance with Chapter 14B LBE participation Reporting requirements.

6. **For payment by the City** - consulting services shall include training and development services as provided by contractor and/or subconsultants. All services performed by contractor and/or subconsultants shall be entered by the provider of services into the CDP Program Management Technology Solution (currently Salesforce) detailing and attesting to services that were provided. Contractor shall maintain and provide, upon request, backup documentation of services provided by contractor and/or subconsultants as entered into the CDP Program Management Technology Solution (currently Salesforce) and the PeopleSoft supplier portal for a period of ten years from the date of service.
7. **LBE Sub-consultant Participation Requirement** – Contractor agrees to meet/exceed a LBE sub-consultant requirement of at least 15%. Only firms certified as LBEs by the CMD may be counted toward this overall 15% LBE requirement.

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

DISCLOSURE:

The CDP/CAPP Program Administrator/Service is not responsible for misrepresentations or failure by the CDP/CAPP participant to disclose material information that could impact CAPP Loan Underwriting, CAPP Loan Funding Request, CAPP Loan Repayment, and Surety Bond Guarantee Exposure, if such misrepresentation or failure to disclose material information could not have been detected during contractor's performance of due diligence in its professional activities under this agreement and within reasonable parameters of this agreement.

Appendix A- Services Provided by Contractor

This scope of work is a general guide to the work the CCSF expects to be performed, and is not a complete listing of all services that may be required or desired.

I. GENERAL PROGRAM DESCRIPTION

The following document sets forth the Scope of Services including administrative, third party administrative and consultative components of the Contractor Development Program (CDP) formerly known as the Surety Bond Program (as outlined in Chapter 14B.16 of the San Francisco Administrative Code). There are four key components to the CDP, Technical Services, Surety Bond and Contractor Accelerated Payment Program (“CAPP”). CCSF Program Team oversight and the activities described for the Contractor Team are based upon the rationale that access to business development assistance, along with financial support where possible, will mitigate the barriers to entry in the public works contracting industry for LBEs (“LBEs”). The CCSF has three primary goals for these Programs:

- Increase technical and financial capacity that will enable LBEs to successfully bid on, win and complete CCSF projects.
- That contractors who participate will go on to graduate, establishing standalone lines of surety credit and financing in private industry, supported by a track record of profitability and an improving trend; and
- That the CCSF will benefit, throughout the process, by expanded competition for public works projects and fulfilling its policy of outreach and assistance to emerging firms through Section 14B.16 of the CCSF’s Administrative Code, which intends to provide guarantees to Surety Companies and Financial Institutions as an incentive for them to provide surety capacity and working capital lines of credit to LBEs.

II. SERVICES TO BE PERFORMED

The Contractor shall implement the following components of the CCSF's Contractor Development Program ("CDP"):

1. TECHNICAL SERVICES

A crucial component to the Contractor Development Program ("CDP") and what really prepares and qualifies the contractors for further services within the program are the technical services. The Contractor shall assist LBE participants in obtaining the skills and knowledge needed to further develop their business acumen through the development of a strategic plan. Contractor will facilitate training and assistance in the areas of, including but not limited to Start-Up Services, Marketing, Estimating, Accounting/Financial Reporting, Labor, Project Management, and Safety.

A. TASKS

- i. **Enrollment & Assessment** -The Contractor shall assist LBEs with CDP enrollment and assessment of the LBE's current business capacity. CDP will interview LBEs and obtain necessary documentation for evaluation to determine the services required by LBE, resulting in the creation of a CDP Participant Development Plan and Profile. CDP will facilitate access to services available from Contractor's Consultants and Third-Party providers.
 - Contact and/or schedule initial intake interviews within 2 days of the LBE being referred to the Contractor; create initial technical assistance plan no later than 30 days from initial contact.
 - Determining and referring LBE participants to the appropriate service including but not limited to specific technical assistance, Surety Bonding, Contractor Accelerated Payment Program ("CAPP")
 - Coordinating the necessary Technical Assistance Services identified as fundamental in the alleviation of deficiencies
 - Assistance with LBE Certification
 - Explanation of Bonding, CAPP and other program services and assisting LBEs with the completion of enrollment for Surety Bond and CAPP if eligible, Enrollment into the CDP
 - Paperwork Assistance, Follow-up and Review
 - Contractor shall ensure all LBE-client point of contact information, notes and documents are entered/uploaded into the CCSF's CDP Program Management Solution platform.
- ii. **Strategic Development** – Assist LBEs with strategic development and a path forward.
 - Business Development Plans – identification of issues that need attention, creation of short-term/long-term goals and milestones to assist LBE in improving business acumen.
 - Consultant Referrals
 - Contractor/Consultant check-ins
 - File Review & Updates

- iii. **CPA Subsidy** – Administrator will facilitate a cost subsidy for financial statements up to \$3200 subject to approval and the contractor pays the first \$500. In addition, other subsidized financial services may be provided to contractor subject to advanced approval by RMD/CMD.
- iv. **Marketing** – Assist LBEs with various elements of marketing their business including but not limited to type of work, public/private work, choosing customers, company resume, marketing materials, networking, certification, website assistance, other
- v. **Estimating** – Assist LBEs with all elements of estimating including prevailing wages, hourly rate, labor package, labor burden, standardized estimate form, bid analysis, production rate, pre-bid RFI, scope letter, subcontractor and vendor quotes, back-log, sales / marketing, job costing and other
- vi. **Accounting/Financial Reporting** – Provide LBEs assistance with accounting and financial reporting including but not limited to: consulting, accounting software implementation, chart of accounts, monthly cash balance spreadsheet, job cost report, monthly financial report review, annual financial report review, financial ratio review, other (Note: access to sub-consultant services book-keeping development may be paid through the CPA subsidy)
- vii. **Labor** – Provide training and education and referrals on the following labor related issues: Mandatory Local Hire and First Source Hiring Ordinances, Apprentice to Journeyman Ratio, OSHA Safety Training, Hours Worked for Hours Pay, Prior Approval for Overtime, Responsibility for Company Property, Time Sheet, Daily Log for Supervisor, Breaks, Organizational Chart, Company Policy, and Other
- viii. **Project Management/Construction Management** – Assist/Coach or refer LBEs or with/on all aspects of project/construction management including but not limited to Review of Contract, Certificates of Insurance, Certified Payroll, Mechanic Lien / Stop Notice, Conditional / Unconditional Release, Project Estimating Schedule of Values, Coordinate Project Schedule, Project Cash Flow, Subcontract Agreement, Purchase Orders, Submittal / Shop Drawings, Follow Up Sheet, RFI - Cost Impact and Delay, Change Orders, Progress Reports, Inspections, Punch List, Close Out Documentation, As-Built Drawings / Record Drawings, O & M Manuals, Owners Training, Warranty, Letters of Acceptance, and Other
- ix. **Safety** – Provide LBEs with safety training including but not limited to: 10 Hour OSHA Training, 30 Hour OSHA Training, Safety Forms, Safety Equipment, Weekly Tool Box Safety Talk, Job Hazard Analysis other project safety issues as needed.
- x. **Start-up Services** – Assist LBEs with start-up services including but not limited to obtaining: Seed Money, Licenses, Insurance, Bank /Checking Account, Union Agreement, Profit Model, Budget, Cash Flow Projection, Working Capital, Revenue / Sales, Size of Project, Financial Statement Set Up, Financial Ratios, Business Plan, and Other
- xi. **Program & Project Support** – Provide overall program and project support to the LBE participants. Including Third-Party Funds Administration

- xii. **Counseling** – Counsel LBEs who are not yet eligible for Bonding/CAPP and provide a path forward to becoming eligible via technical assistance. Counsel LBEs that are CAPP and Bond ready to ensure business knowledge is re-enforced.

B. DELIVERABLES – Due as performed

- i. Create/update an LBE profile in the CCSF's assigned technology platform to track and manage all the technical services provided to CDP participants including service(s) received, hours spent providing service(s) and which CDP team member provided those services including consultants and third party service providers. The profile will be populated and updated as services are performed.
- ii. Develop written LBE enrollment qualifications and necessary documentation for individual CDP participants and document all enrollment processes and progression in the CCSF's CDP Program Management Technology Solution (currently Salesforce).
- iii. Prepare, maintain and distribute CDP application information to CDP Participants and input into CDP Program Management Technology Solution (currently Salesforce).
- iv. Provide assistance in the critical evaluation of an LBE participant's business enterprise to identify deficiencies.
- v. Develop individual LBE strategic development plan, document and input into the CCSF's CDP Program Management Technology Solution (currently Salesforce). Track and manage LBE development steps necessary to CDP participants.
- vi. Facilitate and monitor relationships between LBE and Consultants / Third Party Service providers toward development plan milestones. Require all consultants and third party service providers to track and manage their work in the CDP Program Management Technology Solution (currently Salesforce).
- vii. Provide continual assistance to LBE participants in achievement of development plan goals and re-evaluate strategic plan annually or more frequently, in the alleviation of identified deficiencies.
- viii. Support LBEs through completion of projects, including addressing payment and performance issues, project safety, assistance in obtaining closeout documentation and release of guarantee commitment including the return of CCSF backed collateral to the collateral pool.
- ix. Ensure that all data related to the participants, the technical services provided and any and all assistance provided to the LBEs relating to the program is entered and up to date in the CCSF's assigned technology platform, so that the RMD and CMD can provide accurate and timely reports to the Board of Supervisors.

2. SURETY BOND

The Surety Bond Program, was developed to encourage and increase participation of Local Business Enterprises (LBEs) in city construction and public works projects. The program has been designed to assist contractors and subcontractors in bonding for CCSF construction projects.

- A. **TASKS** - The Contractor shall assist CDP Participants in obtaining required bid, performance and payment bonds by facilitating the interactions and documentation among the enrolled CDP Participants, participating surety broker(s), Surety, and RMD during the bid and award process. Required activities shall include, but are not limited to:
- i. **Bidding Assistance** - Demonstrate and maintain a thorough understanding of current surety market requirements to evaluate the need for guarantee support for the CCSF for bid bonds.
 - ii. **Contract Issues Assistance** – Provide assistance in the negotiation of the terms and conditions of the contract, including detrimental terms that may harm the LBE and heighten the exposure of a bond guarantee. Further assist with issues related to project name/number, contracting department, contractual relationships, notice to proceed dates, bond language, contract language, liquidated damages, warranty language, insurance requirements
 - iii. **Collateral Terms Assistance** – Provide assistance in the negotiation of the terms and conditions of the bid guarantee request, including the amount of the guarantee.
 - iv. **Guarantee Assistance** - Coordinate the preparation and filing of the required documentation for issuance of the bid bond with the CDP Participant, Surety, and RMD, if a CCSF guarantee is necessary (ILOC preparation, funds administration, funds control).
 - v. **Documentation** - Coordinate the required documentation to provide other CDP assistance (such as financial support for Third Party Funds administration), with the CCSF CDP Team review and approval prior to filing, as requested, in the event that a guarantee is not required by the surety but other assistance is required for the issuance of the bid bonds.
 - vi. **Provide Final Bond Assistance & Risk Mitigation** - Coordinate the preparation and filing with the Surety, the Surety Broker, the CDP participant, and RMD to execute the documentation necessary for the performance and payment bonds and concurrent guarantee, with the CCSF CDP Team review and approval prior to filing, as requested.
 - vii. **Coordinate Communication Among All Relevant Parties** - Facilitate the interactions among the CDP participant, Prime Contractor, if necessary, Third Party Funds Control agent, Surety, Surety Broker, Contracting Department, and RMD to execute the documentation necessary for the implementation of Third-Party Funds Control if required by the Surety issuer or CCSF guarantor.
 - viii. **Program & Project Monitoring** – The Contractor shall identify concerns or issues that could result in triggering the bonds and/or the CCSF guarantee and provide

assistance to avoid or reduce the financial impact to the CCSF. Required activities shall include, but are not limited to:

1. Provide periodic assessments of construction project progress for each project subject to a guaranteed bond including maintaining regular communication with the relevant CCSF department(s) and/or prime contractors on each project.
 2. Monitor the project and payment progress with Contract Status Reports and coordinating with the Third-Party Funds Control Agent and the LBE participant as to the payment status of each project.
 3. Anticipate and identify situations (e.g. non-performance) that may cause triggering of the bond. Coordinate with LBE participant, CCSF Department(s), Prime Contractors, CCSF CDP Team to minimize the likelihood the LBE participant may default triggering a demand on the guarantee. The Contractor shall provide expertise in crafting solutions and facilitating work-out meetings, including, but not limited to inclusion of additional experts to mitigate the risk of a default.
- ix. **Coordinate Close-out for Non-Default Project Completion** - The Contractor shall ensure that all documentation is prepared and filed upon completion of any CDP participant projects completed with or without a CCSF guarantee. The Contractor shall coordinate project closeout activities associated with bond guarantees such as closing of the performance and payment bond and obtaining the release of the associated guarantee.
- x. **Facilitate Default Scenarios** - The Contractor shall collaborate with the CCSF CDP Team to ensure prompt and accurate payment of parties in the event of default and a trigger on the guarantee. The Contractor shall identify projects that may be at risk of loss and initiate work out meetings to remediate the issues underlying the default of a bond. In the event of default and a trigger on the guarantee Contractor shall:
1. Coordinate the preparation and filing of documentation between the CCSF department in charge of managing the contract, the defaulting CDP participant, the Prime Contractor, if applicable, the Surety, Third Party Funds Control, RMD, and the CCSF Controller to ensure prompt payment and accurate payment of parties.
 2. Initiate the processes required to enforce the CCSF's right to indemnification from the defaulting LBE participant in collaboration with the CCSF CDP Team.

B. DELIVERABLES – Due as performed

- i. Update the LBE profile to include all Surety Bond activity in the CCSF's assigned technology platform. Manage and track all the bonding assistance provided to LBE CDP participants including assistance provided by consultants and third party service providers. The profile will be populated and updated as services are performed.
- ii. Ensure that all data related to the Surety Bond participants including: number and amount of final bonds, amount of guarantees issued, final bond information (contract name, awarding department, LBE participant name, amount of contract) is entered and up to date in the CCSF's assigned technology platform, so that the RMD can provide accurate and timely reports to the Board of Supervisors.
- iii. Prepare written assessments of construction project progress on bond guaranteed transactions on a quarterly basis to RMD due the first weeks of October, January, April and July
- iv. Coordinate and prepare the required documentation for closing of the bonds and releasing of the CCSF guarantees with CCSF CDP Team. Upon finalization notify CCSF CDP Team of release of guarantee.
- v. In the event of a default, contractor will:
 1. Coordinate the preparation and filing of documentation to ensure prompt and accurate payment to parties with CCSF CDP Team review and approval prior to filing. Upon finalization, provide a copy of required documentation to the CCSF CDP Team.
 2. Initiate process required for indemnification, providing updates to the CCSF CDP Team upon completion.
 3. Maintain a historical summary of CDP defaults for the term of this Agreement plus five years, to include the following data; LBE participant, contract amount, CCSF department, issues underlying the default, and disposition or resolution notes. This information shall be provided to the CCSF upon the CCSF's request and shall be turned over to the CCSF in the event of termination of the Agreement.
- vi. Receive ongoing training and education from US Bank's online Global Trade to ensure continued successful processing of ILOCs, renewals, extensions, etc. or any substitute LOC provider.
- vii. Assist the RMD in the renewal process of the Line of Credit for the Surety Bond Program and provide pertinent and required information as requested.
- viii. Contractor will keep up to date on situations that impact the surety market and will provide updates and notices to the RMD on a regular basis.

3. CONTRACTOR ACCELERATED PAYMENT PROGRAM ("CAPP") - *PILOT PHASE

The CAPP is an essential element to achieving The CCSF's "goals and meeting the requirements of Section 14B.16 of the CCSF's Administrative Code. The San Francisco Community Investment Fund (SFCIF) has approved funding of accelerated payments, to qualified LBE firms, on City and County of San Francisco projects where surety assistance and loan guarantees may or may not be available. Accelerated payment funding through SFCIF will provide LBE's with the support they need to enter the competitive bid arena, successfully win projects, cash flow the work, and grow their firms to a point where standalone surety capacity and lines of credit will be available.

A. TASKS

- i. Contractor Assessments (per description in definition and CDP/CAPP Checklist
- ii. Discern Eligibility prior to Contractor Bidding on projects
- iii. Review CAPP requests from contractors/subcontractors
- iv. Meet with successful bidder to review & solidify CAPP funding request
- v. Verify NTP and confirm contractor compliance
- vi. Affirm appropriate funding amount
- vii. Set up contractor Escrow Accounts
- viii. Complete and submit a CAPP loan package to the loan committee for review
- ix. Review & Approve Contractor CAPP funding requests and submit CAPP funding requests to loan committee and SFCIF
- x. Prepare and underwrite loan closing documents for all appropriate parties (LBE, CAPP Administrator, Service Provider, Funds Administrator)
- xi. Distribute CAPP funds to vendors/project payroll
- xii. Secures lien releases from vendors and confirms payroll distribution
- xiii. Monitor Project and address any issues or concerns for the duration of the project
- xiv. Secure Irrevocable Directive of Draw (IDD) with all appropriate parties (Project Owner or Prime, Subcontractor, CMD, SFCIF, LBE)
- xv. Receive progress payments
- xvi. Deducts from progress payment interest/finance charge for progress payment
- xvii. Directs progress payments to repay CAPP advance
- xviii. Distributes remaining funds from progress payment to Contractor
- xix. Performs continuous project financial analysis to discern contractor eligibility for future funding
- xx. Third-Party Funds Administration
- xxi. Prepare and underwrite loan closeout documentation
- xxii. Consults and collaborates with CAPP Team (including CMD, RM) regarding updates to the Standard Operating Procedures ("SOP")

B. DELIVERABLES

- i. Ensure that Contractor gets at least 10 LBEs "CAPP ready" per fiscal year.
- ii. Make recommendations for adding/dropping CAPP pilot participants as practicable.
- iii. CAPP Loan Underwriting
- iv. Loan Funding Request

- v. CAPP Loan Document Origination
- vi. Irrevocable Directive of Draw
- vii. Servicing of the Loan in Coordination with Third Party Funds Administrator and CMD Administrator
- viii. Manage all consultants and third-party service providers utilized throughout the duration of the loan.
- ix. Update the LBE profile to include all CAPP activity in the CCSF's CDP Program Management Technology Solution (currently Salesforce). Manage and track all the CAPP assistance provided to LBE CDP participants including assistance provided by consultants and third party service providers.
- x. Contractor will communicate with LBE CAPP participant on a regular basis in order keep up to date on situations that may impact project progress and cash flow, and will provide updates and notices to the RMD and CMD on a regular basis.
- xi. Ensure that all data related to the CAPP participants and activities including: number and amount of final loans, cash-flow analysis, final loan information (contract name, awarding department, LBE participant name, amount of contract, NMTC info) is entered and up to date in the CCSF's assigned technology platform, so that the RMD and CMD can provide accurate and timely reports to the Board of Supervisors
- xii. Prepare written assessments of construction project progress on at least a quarterly basis to the RMD and CMD due the first weeks of October, January, April and July
- xiii. Participate in weekly status meetings with CDP Team

4. CDP SERVICES

A. TASKS

- i. **CDP MANAGEMENT & COMMUNICATION** - CDP requires effective CDP management and communications, including, but not limited to, the Contractor shall schedule and coordinate conference calls/meetings at a minimum on a quarterly basis with the CCSF CDP Team or more frequently as deemed necessary by the CCSF. The Contractor's CDP Manager and/or CAPP Manager shall participate in each conference call/meeting. As part of these meetings, the Contractor's Team shall report on its progress on CDP/CAPP activities, Tasks and Deliverables for review, input, and approval by the CCSF CDP Team (including labor hours, expenses, and deadlines).
- ii. **MARKETING & OUTREACH** - The Contractor shall outreach to LBE ("LBE") firms. The Contractor shall inform potential CDP participants of CDP eligibility criteria and benefits, encourage CDP participation and outline the processes to obtain assistance. Required activities shall include, but are not limited to, the following:
 - Producing and distributing educational materials such as hard copy brochures and information sheets about CDP. This information shall be made available on-line and through available print, social and other media to widely publicize the Program.
 - Identifying and participating in workshops, pre-bid conferences, and other networking events, providing an explanation of CDP benefits and distributing Program information, flyers of upcoming events and other information designed to attract participants to the Program.
 - Responding to inquiries for potential CDP participants and other stakeholders, including members of the CDP Team.
- iii. **EDUCATION & TRAINING** - CDP will conduct contractor-related educational seminars/workshops and other training to LBEs and/or potential LBEs. The purpose of educational seminars/workshops is to support and enhance technical assistance training and provide LBEs with industry specific information to enhance their business acumen. Contractor shall conduct a minimum of 1 major training/educational event with the subject-matter approved by RMD/CMD.
- iv. **MANAGING THIRD PARTY SERVICE PROVIDERS** - Providing and maintaining information on possible CDP Third Party service providers who are ready, willing and able to perform services, including but not limited to assisting LBE clients negotiate with their higher tier primes, cash flow analysis and projection, financial statement education and subsidies for financial statement preparation, surety brokers and sureties for surety placements, and Third Party Funds Control.
- v. **MANAGE TIME AND INVOICE FOR SERVICES OF THIRD PARTY SERVICE PROVIDERS-** Managing and documenting the use of CDP services for financial statement education and preparation assistance, including reviewing and submitting monthly invoices to the CCSF CDP Program Team for payment on behalf of Third Party Service Providers for Third Party Service fees.
- vi. **REPORTING** – Contractor shall ensure that all data related to the CDP is entered and up to date in the CCSF's assigned technology platform, so that the RMD and CMD can provide accurate and timely reports to the Board of Supervisors.

B. DELIVERABLES

- i. Prepare and coordinate the design, translation and printing of hard copy CDP brochures and information sheets for each seminar/workshop/event to LBEs and/or potential LBEs with the right of final review and approval reserved to the CCSF CDP Team.
- ii. Conduct a minimum of ten per year educational events with the right of final review and approval of schedules, materials, and participant evaluation results reserved to the CCSF CDP Team.
- iii. Provide timesheets and invoices for third-party service providers the first week of every month
- iv. Ensure that all data related to services provided by CDP is entered and up to date in the CCSF's assigned technology platform, so that the RMD can provide accurate and timely reports to the Board of Supervisors

5. AS-NEEDED SERVICES - The Contractor shall provide services on an as-needed basis, as determined and requested by the CCSF CDP Team, including but not limited to:

A. TASKS

- i. Conducting an analysis of potential projects that may be considered for CDP support.
- ii. Informing CCSF Departments on the role and purpose of surety industry, including but not limited to rates for surety companies, the bid, performance, and payment bond process, surety brokers in the surety process, and surety underwriting requirements.
- iii. Responding to CCSF Departments requests for assistance with maximizing LBE participation on projects.
- iv. Responding to LBE participants requesting assistance on non-guarantee facilitated projects with the CCSF.

Any as-needed services are subject to the CCSF's review and approval of scope and budget, including staffing, timeline, deliverables, costs, and compliance with CCSF contracting laws. In accordance with the terms and conditions of the solicitation under which the Contractor was selected for these services, costs shall be negotiated for a fixed, not to exceed price based on the hourly rates submitted by Contractor in its proposal or response. Such hourly rates shall apply to all services provided throughout this Agreement.

6. GOALS

A. OUTREACH

- i. Using the CMD Certified LBE database, contact a minimum of 5 LBEs a month, who are not currently participating in the CDP in an effort to increase program exposure and participation

B. PARTICIPATION

- i. CDP – Aim to enroll at a minimum 20 new certified LBEs into the CDP on an annual basis.
- ii. Surety Bond - Aim to progress a minimum of 10 LBEs through the program and services in order for them to be prepared and eligible for bonding and ideally resulting in a minimum of 10 bonding assistance requests submitted within each fiscal year. This includes promotion of the CDP at least once monthly to the LBE contractor community including newly certified LBEs. It should be noted that the issuance of bonds through the CDP is primarily a factor of LBE participants bidding on CCSF projects who require bonding assistance.
- iii. CAPP - Aim to progress a minimum of 10 LBEs through the program and services in order for them to be prepared and eligible for CAPP participation and ideally resulting in a minimum of 10 funding requests submitted within each fiscal year. (It should be noted that this is predicated on CAPP eligible LBEs securing CCSF eligible contracts)

- C. **DELIVERABLES** - Record all efforts and ensure that all information is entered and up to date in the CCSF's assigned technology platform so that the RMD and CMD can provide accurate and timely reports to the Board of Supervisors.

III. ROLES & RESPONSIBILITIES

1. CITY

A team comprised of staff from the City and County of San Francisco’s Risk Management and Contract Monitoring Divisions.

Role	Responsibility	Title/Designee	Back-up to Role
Contract Manager	Oversees the contractor/program administrator’s contract with the CCSF to ensure all services are performed under the terms of the contract. Is also a back-up signatory with respect to the Surety Bond and CAPP programs.	Director of Risk Management	CDP Program Manager
CDP Program Manager	Manages the overall CDP program for the CCSF and is responsible for oversight of the CCSF’s program including the Letter of Credit with US Bank and the communications and work order billings to the participating departments. Is also a primary signatory with respect to the Surety Bond and CAPP programs.	Principal Risk Analyst	
CAPP Manager	Oversees the CAPP Program and reports to the SFCIF Board on a quarterly basis. Is also a back-up signatory with respect to the Surety Bond and CAPP programs.	Director of CMD	
CAPP Senior Administrator	Manages the CAPP Program including the activities of the contractor/administrator. Approves funding and draw requests, leads weekly meetings and calls with service providers. Is also a primary signatory with respect to the Surety Bond and CAPP programs.	Senior Administrative Analyst	
CAPP SFCIF Liaison	Communicates and provides updates to the SFCIF Program Manager. Works with the City Attorney on CAPP documents and agreements.	Senior Administrative Analyst	

Role	Responsibility	Title/Designee	Back-up to Role
SFCIF Program Manager	Oversees the SFCIF loan to the CAPP and is the CAPP's liaison to the SFCIF Board.	Development Finance Specialist, OPF	
Loan Advisory Committee	Conducts preliminary reviews of the CAPP loan packages in order to report findings and make recommendations to the loan committee.	RM Principal Risk Analyst, CMD Senior Administrative Analyst	
Loan Committee	Reviews and makes final loan approval/denial decisions	Director of RM, Director of CMD	Deputy City Administrator

2. PROGRAM ADMINISTRATOR

The services to be performed by the Contractor are personal in nature. Consistent with Section 12, 29, and 30 of the Agreement, the Contractor may not subcontract, assign, or delegate any duties or obligations required under the Agreement or make changes in the composition of the Contractor's Team listed in Appendix A without advance written approval of the CCSF CDP Team. The CCSF CDP Team will not without its approval of changes to, or substitution of, equally qualified personnel where the proposed change is requested to perform services added to the Agreement that are within the scope of the Agreement and/or to replace a terminated or promoted named Contractor's Team member.

Role	Responsibility
CDP Program & Project Executive	Overall responsibility for the coordination and delivery of all program services.
Oversees the CDP Program	Shall serve as the primary point of contact with the CCSF Program Team for the CDP – Manages CDP program including the activities of the Surety Account Managers
Oversees the CAPP	Shall serve as the primary point of contact with the CCSF Program Team for the CAPP - Provides technical assistance, and loan underwriting origination and servicing. Manages the subconsultants and tracks their time and expenses, gets approval from CCSF Program Team for such expenses. Follows the protocols set forth in the CAPP Standard Operating Procedures (see attached Addendum A.

LBE Support & CDP Administration	Manage LBE relationships service delivery and service coordination
CDP Advisor	Provide policy and program development support including LBE policy / Best Practice initiatives

3. **SUBCONTRACTORS/CONSULTANTS/THIRD PARTY SERVICE PROVIDERS** – See attached Consultant Agreements for more detailed information including rates and fees (NOTE: I request you keep the list names of the subs as we have put the LBE sub-consultant requirement on this Sole Source Project and that we can better track their LBE sub-consultants’ payments.

Role	Responsibility
Construction Estimating and Financial Consulting	Work directly with the LBEs on Estimating Assistance, Contract Review/Schedule of Values, Project Cash Flow Projection/ Manpower Planning, Job Cost Reports and report back to CAPP Manager
Funds Administration	Provide funds administration services, review of all project information, establish account per CAPP and statutory guidelines, disbursement of CAPP Funds, receipt of contract progress payments, close out of trustee account at project completion, provide project closing statement, and participate in CDP Workshops to support the underpinnings of CAPP
Financial Consultant and Reporting	CDP/CAPP Preliminary LBE Financial Reporting Assessment. Assist CAPP Management in assessing LBE’s current financial reporting process and make recommendations for development. Work with LBEs to address internal financial reporting functions that need implementation or improvement. Assist with set up of accounting systems (i.e. Quickbooks). Train LBE in preparation for balance sheet, profit and loss, work in progress, job cost reporting, and how to develop projected cash flow statements
Strategic Business Development	Assist LBEs with strategic relationship building with prime contractors
Marketing and Strategic Business Development	Provide LBE program participant with business marketing support including website, marketing collateral

7. PROGRAM DEFINITIONS

TERM	DEFINITION
CDP Participant	CDP Eligibility -A LBE that desires to or enters into an Agreement with the CCSF for the performance of a CCSF-sponsored, public works, construction or construction related or general services project, where the contract is funded by the CCSF.
Third Party Funds Control	Bonding or CAPP assistance which requires the monitoring of progress payments and provides payment of funds control fees (required by the Surety) up to 1% of the contract value to ensure proper payment of contract proceeds on a CCSF-sponsored Project.
Program Participant	A LBE certified by CMD that seeks to, or has entered into an Agreement with the CCSF for the performance of public works, construction or construction related or general services projects, where the contract is funded or Sponsored by the CCSF, seeking to access the LBE Surety Bonding, Loan Guarantee, and/or CAPP.
Contractor Assessment	The assessment is based upon interviews and information provided by the LBE certified by CMD. The goal is to obtain background and organizational information, financial information, and project specific information, if applicable. The information / documents requested are located on the CAPP / CDP Checklists.
Deliverable	Services delivered per the Scope of Services and reflected in the CDP Program Management Technology Solution (currently Salesforce).

Legend of Acronyms

Acronym	Definition
RMD	Risk Management Division
CMD	Contract Monitoring Division
CCSF	City & County of San Francisco
CDP	Contractor Development Program
CAPP	Contractor Accelerated Payment Program
SBP	Surety Bond Program
SFCIF	San Francisco Community Investment Fund
LBE	Local Business Enterprise
MPP	Mentor Protégé Program

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Appendix B
Calculation of Charges
(SEE ATTACHED)

DESCRIPTION OF DELIVERABLES – Tangible pass through or services reflected in the CDP Program Management Technology Solution (currently Salesforce) and attributable to performing contractor/subconsultant.

(NOTE: The following is only a sample. For a comprehensive Scope of Services listing under the contract, refer to Appendix A.)

Contractor Development Program - There are three elements to the Contractor Development Program listed below: Technical Services, Surety Bond, and the Contractor Accelerated Payment Program (“CAPP”). The services and fees below can be provided by contractor or consultant subcontractors. All elements require monthly reporting and billing.

▪ **Technical Services**

- Enrollment and Assessment
- Strategic Development
- CPA Subsidy review, determination, recommendation and submission for approval
- Marketing
- Estimating
- Accounting/Financial Reporting – consulting, review, determination, recommendation and submission for approval
- Labor
- Project Management/Construction Management
- Safety
- Start-up Services
- Program & Project Support
- Counseling
- Paperwork Review
- Education & Outreach
- Data Entry and Reporting into City’s web-based system of record

▪ **Surety Bond**

- Bidding Assistance
- Communication with Sureties
- Resolution of Bond/Contract Language issues
- Collateral Terms Assistance
- Guarantee Assistance
- Documentation
- Provide Final Bond Assistance & Risk Mitigation
- Coordinate Communication Among All Relevant Parties
- Meetings
- Program & Project Monitoring
- Coordinate Close-out for Non-Default Project Completion
- Facilitate Default Scenarios
- Third-Party Funds Administration
- Data Entry and Reporting into City’s web-based system of record

▪ **Contractor Accelerated Payment Program (CAPP)**

- Contractor Assessments/Loan Underwriting
 - Discern Eligibility prior to Contractor Bidding on projects
 - Review CAPP requests from contractors/subcontractors
 - Meet with successful bidder to review & solidify CAPP funding request
 - Verify NTP and confirm contractor compliance
 - Affirm appropriate funding amount
 - Set up contractor Escrow Accounts
 - Complete and submit a CAPP loan package to the loan committee for review
 - Review & Approve Contractor CAPP funding requests and submit CAPP funding requests to loan committee and SFCIF
 - Prepare and underwrite loan closing documents for all appropriate parties (LBE, CAPP Administrator, Service Provider, Funds Administrator)
 - Distribute CAPP funds to vendors/project payroll
 - Secures lien releases from vendors and confirms payroll distribution
 - Monitor Project and address any issues or concerns for the duration of the project
 - Secure Irrevocable Directive of Draw (IDD) with all appropriate parties (Project Owner or Prime, Subcontractor, CMD, SFCIF, LBE)
 - Receive progress payments
 - Deducts from progress payment interest/finance charge for progress payment
 - Directs progress payments to repay CAPP advance
 - Distributes remaining funds from progress payment to Contractor
 - Performs continuous project financial analysis to discern contractor eligibility for future funding
 - Third-Party Funds Administration
 - Data Entry and Reporting into City's web-based system of record
 - Prepare and underwrite loan closeout documentation
 - Consults and collaborates with CAPP Team (including CMD, RM) regarding updates to the Standard Operating Procedures (SOP)

SAMPLE BREAKDOWN OF CHARGES	
<p>Administrative Fees - The Contractor shall prepare and submit monthly invoices to the City Program Team for payment on behalf of their administrative service fees for services outlined above as performed by the contractor and not any of their subconsultants and not to exceed the maximum described in the table below. Billable Administrative Service Fees must be tracked and reflected in the CDP Program Management Technology Solution (currently Salesforce). Administrative Fees will be paid based on Contractor activity and available budget, as determined and approved by the City Program Team.</p>	
Total Annual Fees (NOT TO EXCEED)	\$xxx
<p>Third Party Service Fees - The Contractor shall prepare and submit monthly invoices to the City Program Team for payment on behalf of Third-Party Service Providers for Third Party Service fees not to exceed the maximum described in the table below. Billable Third-Party Service Fees must be tracked and reflected in the CDP Program Management Technology Solution (currently Salesforce). Fees will be paid based on Third Party Service Provider activity and available budget, as determined and approved by the City Program Team.</p> <ul style="list-style-type: none"> ▪ ILOC Fees – US Bank charge for ILOC based on \$8 Million in issued guarantees at 1.5% (as needed) ▪ Funds Control Surety Bond Program – Program third party funds administration at 1.0% rate (as needed) ▪ Funds Control CAPP – Program third party funds administration at 1.0% rate (as needed) 	
Total Annual Fees (NOT TO EXCEED)	\$xxx*
<p>Third Party Accounting Services/Consultant Fees -</p> <ul style="list-style-type: none"> ▪ Accounting Services for the CDP including those related to Surety Bond ▪ CPA Subsidies – financial statement subsidies (as needed) ▪ Funds Control Consulting Services (as needed) 	
Total Annual Fees (NOT TO EXCEED)	\$xxx*
Total (NOT TO EXCEED):	\$xxx

***Any overhead fees must be disclosed and are not to exceed 15%.**