

## **P-600 INSTRUCTIONS** **(delete this entire page before finalizing)**

USE THIS P-600 PROFESSIONAL SERVICES AGREEMENT FOR MOST PROFESSIONAL SERVICES.

1. COMPLETE ALL **GREEN FIELDS**.
2. **INSTRUCTIONS ARE IN RED**.
3. UNLESS SPECIFICALLY INSTRUCTED TO DELETE, SECTIONS THAT DO NOT APPLY ARE MARKED **RESERVED (SECTION NAME)** OR **WAIVED**
4. DON'T BOLD THE FONT UNLESS IT'S ALREADY IN BOLD.
5. IF A LINK IS NOT ACCESSIBLE, CONTACT [OCA@sfgov.org](mailto:OCA@sfgov.org).
6. TRACK ALL CHANGES.
7. HAVE YOUR CITY ATTORNEY REVIEW THE PROPOSED REDLINED AGREEMENT BEFORE SENDING TO THE CONTRACTOR FOR SIGNATURE.
8. MOST IMPORTANTLY, **DELETE ALL RED INSTRUCTIONS** AND **CHANGE ALL GREEN FIELDS** TO BLACK FONT.

### **Revision History:**

Jan 2026 – Updated to OCA 1/26 version (jgg & LL)  
2/17 – small grammar/alignment edits (jgg)  
3/9 – updated HCAO instructions (jgg & LL)  
3/11 – added a footer (EAL)  
3/18 – clarified HCAO instructions

**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]**

**[Insert agreement number]**

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

**Recitals**

WHEREAS, the Human Services Agency **or** Disability and Aging Services (“Department”) wishes to procure [insert short description of the services to be provided] from Contractor; and

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

**→ Choose one of the following options and delete the other 3**

**[RFP]** WHEREAS, Contractor was competitively selected pursuant to a Request for Proposals (“RFP”) entitled [enter RFP name] issued through Sourcing Event ID [Enter Number]; and

**[RFQ]** WHEREAS, Contractor was competitively selected pursuant to a Request for Qualifications (“RFQ”) entitled [enter RFQ name] issued through Sourcing Event ID [Enter Number] which resulted in a prequalified pool of suppliers from which Contractor was selected **Choose:** as the highest rank proposer in the prequalified pool **or** as the highest rank proposer after a solicitation by the Department to the prequalified pool **or** without a further solicitation to the prequalified pool because the Agreement will have a not-to-exceed amount that is less than or equal to the Minimum Competitive Amount as defined by Section 21.02 of the San Francisco Administrative Code; and

**[No Solicitation- Waiver Approved by OCA]** WHEREAS, Contractor was selected pursuant to San Francisco Administrative Code Section [Enter Admin Code Section]; pursuant to waiver OCAWVRXXXXXX granted by the Office of Contract Administration; and

**[No Solicitation - Waiver Not Approved by OCA]** WHEREAS, Contractor was selected pursuant to San Francisco Administrative Code Section [Enter Admin Code Section] pursuant to a waiver granted by [Enter Dept or Commission approving the waiver]; and

➔ **LBE Participation Requirements:** Review the [14B Requirements and Applicability Guidance](#) to determine if LBE subcontracting requirements apply and/or can be waived. Then choose between the following options and delete the ones not used.

**[LBE requirements apply]** WHEREAS, this is a contract for Services and there is a Local Business Enterprise (“LBE”) subcontracting participation requirement with respect to the Services, as defined further herein; and

**[LBE requirements waived]** WHEREAS, this is a contract for Services and the Local Business Enterprise (“LBE”) subcontracting participation requirement for the Services has been waived pursuant to waiver [CMD14BXXXXXX](#); and

**[Micro LBE Set Aside]** WHEREAS, this is a Micro LBE Set Aside Contract as defined by Chapter 14B of the San Francisco Administrative Code; and

**[Exempt from 14B]** WHEREAS, this Contract is deemed exempt from Chapter 14B of the San Francisco Administrative Code because [\[enter reason\]](#) and, as such, there is no Local Business Enterprise (“LBE”) subcontracting participation requirement for this Agreement; and

➔ **If the Contract includes Federal funds, insert the following clause:**

WHEREAS, the Contract is funded with Federal dollars, ALN # [\[Insert ALN number\]](#); and

➔ **Civil Service or Prop J Approval:** CSC approval is required for the [labor](#) component of an agreement. Review the [Civil Service and Prop J Requirements and Applicability Guidance](#) to determine if CSC approval is required. Then choose from the following options and delete the ones not used.

**[Single Contract]** WHEREAS, approval for the Agreement was obtained on [\[insert date of Civil Service Commission action or DHR approval date if under \\$200K\]](#) from the [\[Civil Service Commission or Department of Human Resources on behalf of the Civil Service Commission\]](#) under PSC number [\[insert PSC number\]](#) in the amount of [\[insert Dollar Amount\]](#) for the period of [\[insert number of years\]](#); and

**[Multiple Contracts]** WHEREAS, approval for the Agreement was obtained on [\[insert date of Civil Service Commission action or DHR approval date if under \\$200K\]](#) from the [\[Civil Service Commission or Department of Human Resources on behalf of the Civil Service Commission\]](#) under PSC number [\[insert PSC number\]](#) which authorizes the award of multiple agreements, the total value of which cannot exceed [\[insert dollar amount\]](#) and the individual duration of which cannot exceed [\[insert number of years\]](#); and

**[Exempt from PSC]** WHEREAS, this Agreement is for [\[enter qualifying exemption from PSC policy/Service Now\]](#) (as defined by the 2023 PSC Policy of the Civil Service Commission) and, as such, is exempt from Civil Service Commission review;

➔ **Commission Approval.** If your department has a Commission (or governing Board), review its policy to determine if its approval is required. If Commission approval is required, insert the following clause. Otherwise delete.

WHEREAS, the City's [name of Commission] approved this Agreement on [insert date of Commission meeting] in the amount of [insert Dollar Amount] for the period commencing [Insert Start Date] and ending [Insert End Date]; and

➔ **Ethics Form 126f2.** Review this document to see if award of this contract requires your department to submit Ethics Form 126f2: [Ethics Forms Requirements and Applicability](#). If the form is required, insert the following clause. REMINDER: HSA only requires if \$10 million NTE, or 10 years duration. Otherwise delete.

WHEREAS, the Department has filed Ethics Form 126f2 (Notice of Submission of Proposal) because this Agreement has a value of \$100,000 or more in a fiscal year and will require the approval of [Choose all that apply] an elected officer of the City, a board on which an elected officer of the City serves, a state agency on whose board an elected officer of the City's appointee serves, and/or the Board of Supervisors; and

➔ **Ethics Form 126f4.** Review this document to see if award of this contract requires your department to submit Ethics Form 126f4: [Ethics Forms Requirements and Applicability](#). If the form is required, insert the following clause. REMINDER: HSA only requires if \$10 million NTE, or 10 years duration. Otherwise delete.

WHEREAS, the Department will file Ethics Form 126f4 (Notification of Contract Approval) within five days of execution of the Agreement because this Agreement has a value of \$100,000 or more in a fiscal year and will require the approval of [Choose all that apply] an elected officer of the City, a board on which an elected officer of the City serves, a state agency on whose board an elected officer of the City's appointee serves, and/or the Board of Supervisors; and

➔ **Board of Supervisors Approval.** Review this document to see if approval by the Board of Supervisors is required under Charter Section 9.118: [BOS Requirements and Applicability](#) (\$10 million NTE or 10 years duration; include separate paragraph for each). If Board of Supervisors approval is required, insert the following clause. Otherwise delete.

WHEREAS, the City's Board of Supervisors approved this Agreement by [insert resolution number] on [insert date of Board action] in the amount of [insert Dollar Amount] for the period commencing [Insert Start Date] and ending [Insert End Date]; and

➔ Insert additional WHEREAS clauses as appropriate.

Now, THEREFORE, the parties agree as follows:

## Article 1 Definitions

➔ Include other definitions (in alphabetical order) as needed below.

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 “Appendices” means the appendices listed in Article 14 (“Appendices”) herein.

1.3 “Artificial Intelligence” or “Artificial Intelligence Model” means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

1.4 “Artificial Intelligence System” means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

➔ Only keep 1.5 (“BAA”) if Agreement includes a BAA, otherwise delete in its entirety without reserving and renumber.

1.5 “Business Associate” or “BAA” has the meaning given to such term under HIPAA and its implementing regulations, including 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103, as may be amended from time to time.

1.6 “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 the **Human Services Agency or Disability and Aging Services**.

1.7 “City Data” means all data collected, used, maintained, processed, stored, and/or generated by or on behalf of City in connection with this Agreement. City Data includes, without limitation, Confidential Information, and Deliverable Data.

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

1.9 “Confidential Information” means confidential City information including, but not limited to, personal 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. Confidential Information includes, without limitation, City Data.

1.10 “Contractor” means **[insert name and full address of contractor]**.

1.11 “Deliverable Data” means any data that is required to be delivered to City as a Deliverable, or as a part of a Deliverable, under this Agreement.

1.12 “Deliverables” means Contractor’s or its subcontractors’ work product, including any partially completed work product and related materials, resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, work product described in the “Scope of Services” attached as Appendix A.

1.13 “Generative Artificial Intelligence” means Artificial Intelligence that can generate derived synthetic content, such as text, images, video, and audio, that emulates the structure and characteristics of the Artificial Intelligence’s training data.

➔ Only keep 1.14 (“BAA”) if Agreement includes a BAA, otherwise delete in its entirety without reserving and renumber.

1.14 “Health Care Component” has the meaning given to such term under HIPAA and its implementing regulations, including 45 C.F.R. Section 164.103, as may be amended from time to time.

➔ Only keep 1.15 (“BAA”) if Agreement includes a BAA, otherwise delete in its entirety without reserving and renumber.

1.15 “Hybrid Entity” has the meaning given to such term under HIPAA and its implementing regulations, including 45 C.F.R. Section 164.103, as may be amended from time to time.

1.16 “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.

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

1.18 “Personal Identifiable Information (PII)” means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household. Personal information includes, but is not limited to, the following if it identifies, relates to, describes, is reasonably capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular individual or household as further defined in the California Consumer Privacy Act.

1.19 “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 **Term.** The term of this Agreement shall commence on [insert start date] and expire on [insert expiration date], unless earlier terminated as otherwise provided herein.

➔ If you wish to include options for the City to extend the contract consistent with what was advertised in the solicitation (likely the RFP) or, if a solicitation waiver was approved, include paragraph 2.2 below. Otherwise, Otherwise, delete Section 2.2 below and replace with **Reserved (Options to Extend)**.

2.2 **Options to Extend.** City has the option to renew the Agreement for a period of [write out number number] (#) additional years. City may exercise this option at City’s sole and absolute discretion by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.” Extensions may be for the whole or partial period provided for above.

## **Article 3 Financial Matters**

### **3.1 Certification of Funds; Budget and Fiscal Provisions**

3.1.1 **Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of Section 3.105 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.

3.1.2 **Maximum Costs.** 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 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.”

3.2 **Authorization to Commence Work.** Contractor shall not commence any work under this Agreement until City has issued formal written authorization to proceed, such as a purchase order, task order, or notice to proceed. Such authorization may be for a partial or full scope of services.

### 3.3 Compensation.

3.3.1 **Contract Not to Exceed Amount.** The amount of this Agreement is **Amount spelled out (\$XXX,XXX)** plus a contingency of **Amount spelled out (\$XXX,XXX)** for an Agreement total that shall not exceed **Amount spelled out (\$XXX,XXX)**, the breakdown of which appears in Appendix B, "Calculation of Charges." City shall not 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.** Contractor is not entitled to any payments until City approves the Services delivered. Payments to Contractor by City shall not excuse Contractor from its obligation to replace the unsatisfactory Services even if the unsatisfactory character was apparent or could have been detected at the time such payment was made. Non-conforming Services may be rejected by City and in such case must be replaced by Contractor without delay at no cost to City.

3.3.3 **Withhold Payments.** If Contractor fails to provide the Services in accordance with Contractor's obligations under this Agreement, City may withhold any and all payments due to 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 **Invoicing.** Contractor shall invoice the City for the Services provided under this agreement on a timely basis, and in no event later than 30 days after delivery of the Services or as specified in Appendix B, Calculation of Charges. Invoices submitted by Contractor 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 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.

→ **LBE Payment and Utilization Tracking System.** If LBE requirements are waived, delete Section 3.3.5 below and replace with **Reserved (LBE Payment and Utilization Tracking System).**

3.3.5 **LBE Payment and Utilization Tracking System.** LBE Subcontracting Participation Requirements apply to this Agreement. Contractor shall: (a) within three (3) business days of City's payment of any invoice to Contractor, pay LBE subcontractors as provided under Chapter 14B.7(H)(9); and (b) within ten (10) business days of City's payment of any invoice to Contractor, confirm its payment to subcontractors using City's Supplier Portal Payment Module, unless instructed otherwise by CMD. Failure to submit all required payment information to City's Supplier Portal Payment Module with each payment request may result in the withholding of twenty (20%) of subsequent payments due. Self-Service Training is located at this link: <https://sfcitypartner.sfgov.org/pages/training.aspx>

➔ **Grant Funding.** If this agreement is funded either partially or in whole by State or Federal funds AND such funds come with grant terms, include the following section. Otherwise delete Section 3.3.6 below and replace with **Reserved (Grant Funded Contracts)**.

### 3.3.6 Grant Funded Contracts.

(a) **Grant Terms.** The funding for this Agreement is provided in full or in part by a Federal or State Grant to City. As part of the terms of receiving the funds, City is required to incorporate some of the terms into this Agreement. The incorporated terms may be found in Appendix [insert appendix letter], “Grant Terms.” To the extent that any Grant Term is inconsistent with any other provisions of this Agreement such that Contractor is unable to comply with both the Grant Term and the other provision(s), the Grant Term shall apply.

(b) **Disallowance.** If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed due to Contractor’s non-compliance with the Grant Terms, Contractor shall promptly refund the disallowed amount to City upon City’s request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other agreement between Contractor and City.

(c) **Subgrantees.** Contractor shall insert each Grant Term into each lower tier subcontract. Contractor is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor, or service provider.

### 3.3.7 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 rendering of the Services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date City issued a check to Contractor or, if Contractor agreed to electronic payment, the date City has posted electronic payment to Contractor.

(b) **Reserved (Payment Discount Terms).**

➔ **Include Section 3.3.8 only if contract is with a Non-profit organization, otherwise delete.**

3.3.8 **Cost of Doing Business Adjustment.** The City may, acting in its sole discretion, adjust the Contract amount in any year to reflect a Cost of Doing Business (“CODB”) adjustment as authorized by the San Francisco Board of Supervisors. The Board of Supervisors and the Mayor will make the CODB determination annually through the budget process. Contractor understands and agrees that the CODB adjustment is wholly discretionary and not a Contractor entitlement.

3.4 **Audit and Inspection of Records.** Contractor agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make copies of 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 Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section.

➔ **Prevailing Wages.** Review the [Prevailing Wage Requirements and Applicability Guidance](#) to determine if Prevailing Wage applies and, if so, which law governs. If Prevailing Wage is not applicable to this contract, delete Section 3.6 below and replace with **Reserved (Payment of Prevailing Wages).**

### 3.6 **Payment of Prevailing Wages**

3.6.1 **Covered Services.** Services to be performed by Contractor under this Agreement will involve the performance of work covered by Articles 101 through 107 of the San Francisco Labor and Employment Code, as applicable, including without limitation the California Labor Code provisions incorporated therein (collectively, “Covered Services”), all of which is incorporated into this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

3.6.2 **Wage Rates.** The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors, as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Contractor agrees that it shall pay not less than the highest general Prevailing Rate of Wages, to all workers employed by Contractor who perform Covered Services under this Agreement. Copies of the Prevailing Rate of Wages as fixed and determined in accordance with Labor and Employment Code Section 103.2 are available from the City’s Office of Labor Standards and Enforcement (“OLSE”) and are on file at the Department’s principal office or at the job site and shall be made available to any interested party on request.

3.6.3 **Subcontract Requirements.** Contractor shall insert in every subcontract for the performance of Covered Services under this Agreement a provision requiring subcontractor to pay all persons performing labor in connection with Covered Services under the subcontract not less than the highest general prevailing rate of wages as determined by the Board of Supervisors for such labor and services.

3.6.4 **Job Site Notices and Records.** Contractor shall prominently post at each job site a sign informing employees that the work is subject to the City’s Prevailing Wage requirements and that these requirements are enforced by OLSE. Contractor shall also maintain a sign-in and sign-out sheet in a format prescribed by OLSE showing which employees are present on the job site.

3.6.5 **Payroll Records.** Contractor shall keep or cause to be kept, for a period of four years from the date of completion of the subject work, complete and accurate payroll records for all workers performing Covered Services, including without limitations timecards, trust fund reports, apprenticeship agreements, accounting ledgers, tax forms, proof of payment, and superintendent and foreperson daily logs for all trades workers performing work. Such records shall include the name, address, and social security number of each worker who provided Covered Services, including apprentices, their classification, a general description of the Services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid. Every subcontractor who shall perform any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by City and its authorized representatives.

3.6.6 **Certified Payrolls.** Contractor shall prepare certified payrolls for the period involved for all employees, including those of subcontractors, who performed Covered Services. [The remaining text of this subsection may be deleted if this is a Covered Contract under Article 102 of the Labor and Employment Code and submission of certified payroll records is deemed by the Department to be unnecessary.] Contractor and each subcontractor performing Covered Services shall electronically submit certified payrolls to City as specified by City and DIR. Contractor and all subcontractors that will perform Covered Services shall attend a training session on the preparation and electronic submission of certified payroll records provided by City. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to City.

3.6.7 **Compliance Monitoring.** Covered Services performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements. Contractor agrees that (i) OLSE shall have the right to engage in random inspections of job sites and have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks, and (ii) OLSE may audit such records of Contractor and any subcontractors as it reasonably deems necessary. Failure to comply with these requirements may result in penalties and forfeitures pursuant to the California Labor Code, including Section 1776(h), as amended from time to time, and San Francisco Labor and Employment Code Article 101 through 107, as applicable.

3.6.8 **Remedies.** Should Contractor, or any subcontractor performing Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Agreement or subcontract for the Covered Services, the general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in the San Francisco Labor and Employment Code and/or California Labor Code Section 1775. City, when certifying any payment which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

## **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 City are not authorized to request, and City is not required to compensate, for Services beyond those stated.

4.2 **Qualified Personnel.** Contractor represents and warrants that it is qualified to perform the Services for which it is contracted to provide through this Agreement, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. 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 sufficient resources for timely completion within the project schedule.

➔ **Subcontractor Names.** Subcontractors must be listed on Appendix E. Subcontractors may be Independent Contractors in the agreement, and by listing them by name, contractors are unable to change them without approval.

4.3 **Subcontracting.** 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. [Use the following sentence and list desired subcontractors if a **specific** contractor is **required** by HSA for services – otherwise omit:] City’s execution of this Agreement constitutes its approval of the subcontractors listed below and/or in Appendices.

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 is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required under this Agreement. Contractor, and its agents and employees will not represent or hold themselves out to be employees of City at any time. 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 is liable for its acts and omissions. 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 of its agents or employees. 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 Section 4.4. Should City determine that Contractor is not performing in accordance with the requirements of Section 4.4, 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 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 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 hold 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 Section 4.4.

4.5 **Assignment.** The Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.6 **Reserved. (Liquidated Damages)**

4.7 **Reserved. (Performance Bond)**

4.8 **Reserved. (Fidelity Bond or Crime Insurance)**

4.9 **Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver Services using all modes of transportation available. In addition, the Contractor shall charge fair and competitive prices for Services ordered during an emergency and not covered under the awarded Agreement.

## Article 5 Insurance and Indemnity

### 5.1 Insurance.

➔ **Overview.** The following types and amounts of insurance are those most commonly required in City contracts. However, departments should tailor the types and amounts of insurance to the particular risks associated with each contract. Examples of what will trigger higher policy limits and additional types of coverage include: PII, PHI, chemicals, fuel, transport of hazardous waste, heavy equipment, aircraft, and any commodity or service that can cause significant property damage or bodily injury. Departments will need to determine the associated risks and insurance coverage requirements prior to issuing a solicitation. In addition, the Risk Management Division must be consulted prior to any reduction in the amount of insurance coverage required (if lower than minimum limits) or removal of these coverages. Such consultation must be documented when submitting the Agreement for approval. Removals should be indicated with **Reserved (Clause Name)**.

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:

➔ **General Liability Insurance.** General Liability insurance is always required. Add "Policy must include Abuse and Molestation coverage." where Contractor will provide services for vulnerable populations such as minors, the elderly, and/or disabled/dependent adults.

(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. **Policy must include Abuse and Molestation coverage.**

➔ **Auto Liability Insurance.** Auto Liability insurance is required unless the contractor submits a written statement that it will not use any vehicles to perform its contractual obligations, in which case Risk Management consultation is not needed. If not applicable, delete Section (b) below and replace with **Reserved (Commercial Auto Liability Insurance).**

(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.

➔ **Workers’ Compensation Insurance.** Workers’ Compensation insurance is required for any company with employees. If Contractor submits a written statement that Workers’ Compensation insurance is not applicable (due to contractor being an individual, sole proprietor or independent contractor), Risk Management consultation is not needed. Delete Section (c) below and replace with **Reserved (Workers’ Compensation Insurance).**

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

➔ **Professional Liability Insurance.** Contractors that must be State licensed as professionals to perform services, i.e., social workers, psychologists, medical professionals, architects, engineers, certified public accountants, attorneys, brokers, etc. If the Contractor is not such a professional, then remove Section (d) below and replace with **Reserved (Professional Liability Insurance).**

(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.

➔ **Technology Errors and Omissions Insurance.** Contractors that will provide the following services must provide Technology Errors and Omissions Insurance: Application Service Providers, Computer Consultants/Engineers, Data Processing or Programming, Data Hosting Services, Internet Services, Software Developers and Computer Systems Management or Data Analysis Services. If the Contractor does not provide such services, then delete Section (e) below and replace with **Reserved (Technology Errors and Omissions Insurance).** **NOTE:** Limits of insurance may be increased according to the Scope of Work, risk, and/or amount of contract. **To determine insurance limits, please see the HSA Cyber Insurance Rubric.**

(e) Technology Errors and Omissions Liability Insurance, 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 this 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, City's or third person's computer, computer system, network, or similar computer-related property and the data, software, and programs thereon.

➔ **Cyber and Privacy Insurance.** Contracts for hardware, software or professional services that create or increase the risk of loss of confidential data must include a requirement for Cyber and Privacy Insurance. If the Contractor does not provide such services, then delete Section (f) below and replace with **Reserved (Cyber and Privacy Insurance)**. NOTE: Limits of insurance may be increased in accordance with the number and type of records potentially at risk as well as vendor's data retention policy. To determine insurance limits, please see the HSA Cyber Insurance Rubric.

(f) Cyber and Privacy Liability Insurance with limits of not less than **\$5,000,000-\$20,000,000** 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 any form.

➔ **Pollution Liability Insurance.** Pollution Liability Insurance is required if the Contractor is required to perform abatement or disposal of contaminated materials. If the Contractor does not provide such services, then delete Section (g) below and replace with **Reserved (Pollution Liability Insurance)**.

(g) Pollution Liability Insurance applicable to Contractor's activities and responsibilities under this Agreement with limits not less than **\$X,000,000** each occurrence, including coverage for on-site third party claims for bodily injury and property damage.

#### 5.1.2 Additional Insured

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

➔ **Commercial Automobile Liability Insurance Additional Insured Endorsement.** If Auto Liability Insurance is not required, delete Section (b) below and replace with **Reserved (Commercial Automobile Liability Insurance Additional Insured Endorsement)**.

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

➔ **Pollution Additional Insured Endorsement:** If Pollution Liability Insurance is not required, delete Section (c) below and replace with **Reserved (Pollution Additional Insured Endorsement)**.

(c) The Commercial Automobile Liability Insurance policy include (i) Auto Pollution Additional Insured including as Additional Insured the City and County of San Francisco and its Officers, Agents, and Employees; and (ii) Form MCS-90 for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980.

→ **Workers Compensation Insurance Waiver of Subrogation.** If Workers Compensation Insurance is not applicable or if Contractor is NOT performing the Services on City property and/or premises, delete Section 5.1.3 below and replace with **Reserved (Workers Compensation Insurance Waiver of Subrogation)**. Seek City Risk Manager approval if Contractor is expected to enter City premises but is not willing to provide the waiver of subrogation endorsement.

5.1.3 **Waiver of Subrogation.** The Workers' Compensation Insurance policy(ies) shall include a waiver of subrogation in favor of City for all work performed by the Contractor, and its employees, agents and subcontractors.

#### 5.1.4 **Primary Insurance**

(a) The Commercial General 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.

→ **Auto Liability Insurance as Primary Insurance.** If Auto Liability Insurance is not required, delete Section(b) below and replace with **Reserved (Auto Liability Insurance as Primary Insurance)**.

(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.

→ **Pollution Liability Insurance as Primary Insurance.** If Pollution Liability Insurance is not required, delete Section (c) below and replace with **Reserved (Pollution Liability Insurance as Primary Insurance)**.

(c) The Pollution 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.

#### 5.1.5 **Other Insurance Requirements**

(a) Thirty (30) days' advance written notice shall be provided to 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 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, be maintained for a period of three (3) 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 City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, 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 including additional insured and waiver of subrogation status, as required, 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 and its officers, agents, and employees, and the Contractor as additional insureds and waive subrogation in favor of City, where required.

## 5.2 **Indemnification.**

5.2.1 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 liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, 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 personal 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; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are 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, experts, and related costs, and City's costs of investigating any claims against City.

5.2.2 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.

5.2.3 Contractor shall indemnify, defend, 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.

5.2.4 Under no circumstances will City indemnify, defend, or hold harmless Contractor.

## **Article 6 Liability of the Parties**

6.1 **Liability of City.** CITY'S TOTAL LIABILITY UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ITS PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "CONTRACT NOT TO EXCEED AMOUNT," 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.

➔ **Liability for Incidental and Consequential Damages.** Contractors frequently ask to limit their general liability under the contract, cap incidental and consequential damages, and/or cap their indemnification obligation. Each situation raises unique issues, but revised terms may be negotiated. Consult with your assigned Deputy City Attorney to assist you in drafting this language if necessary. If removed, delete Section 6.3 below and replace with **Reserved (Liability for Incidental and Consequential Damages)**.

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 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. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to timely report on behalf of City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by City to enable 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 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 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 ("Notice of Termination"). The Notice of Termination shall specify the date on which termination of the Agreement shall become effective ("Termination Date").

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 affect the termination of this Agreement on the Termination Date and to minimize the liability of

Contractor and City to third parties as a result of the 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) Completing performance of any Services that City requires Contractor to complete prior to the Termination Date.

(b) Halting the performance of all Services on and after the Termination Date.

(c) Cancelling all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(d) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts cancelled. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the cancellation of such orders and subcontracts.

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

(f) Taking such action as may be necessary, or as 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 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 provided prior to the Termination Date, for which City has not already made 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 and returning material or equipment delivered to City or otherwise disposed of as directed by City.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of such 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, 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 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 **Payment Obligation.** City’s payment obligation under Section 8.1, “Termination for Convenience,” 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:

➔ **Events of Immediate Default.** Failure to comply with the following contract sections gives City cause to immediately terminate the Agreement. However, you may add other critical obligations that, when violated, also give City the right to immediately terminate the Agreement. **Prior to finalization, confirm that the numbers in the table properly correspond to their location in this document.**

3.5	Submitting False Claims.	10.3.5	Working with Minors
4.5	Assignment	10.3.6	Alcohol and Drug-Free Workplace
Article 5	Insurance and Indemnity	11.9	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(b) Contractor fails or refuses to perform the Services or 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 (10) days after written notice thereof from City to Contractor or from when Contractor otherwise becomes aware of the Event of Default. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, in addition to all other remedies available to City, 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, reorganization or arrangement, 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 Default Remedies.** 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 arising from the Event of Default and/or in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall also 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 City.

**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 in accordance with 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 Section 8.4, “Rights and Duties upon Termination or Expiration,” and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

**→ Survival Clauses.** *The below sections will survive once this Agreement ends. Prior to finalization, confirm that the numbers in the table properly correspond to their location in this document.*

3.3.2	Payment Limited to Satisfactory Services	8.2.2	Default Remedies
3.3.6(b)	Grant Funded Contracts – Disallowance	9.1	Ownership of Results
3.4	Audit and Inspection of Records	9.2	Works for Hire
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. Promptly upon expiration of this Agreement, or promptly upon receipt by Contractor of notice of termination of this Agreement, Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any Deliverables, 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**

*The following subsections may be modified if the Department does not expect to own, in whole or in part, the works, studies, reports, etc. to be delivered pursuant to the requirements of this Agreement.*

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors in the Deliverables, any partially completed Deliverables, and related materials, shall become the property of and will be transmitted to City. Unless expressly authorized in writing by City,

Contractor may not retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** All copyrights in Deliverables that are considered works for hire under Title 17 of the United States Code, shall be the property of City. If any such Deliverables are ever determined not to be works for hire under federal law, Contractor hereby assigns all Contractor’s copyrights to such Deliverables to 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 its subcontractors. With City’s prior written approval, Contractor and its subcontractors may retain and use copies of such works for reference and as documentation of their respective experience and capabilities provided that any such use is in conformance with the confidentiality provisions of this Agreement.

## **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/%20](http://www.amlegal.com/codes/client/san-francisco_ca/%20).

### **10.2 Governmental Conduct Related Contractual Obligations.**

10.2.1 **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 City if it becomes aware of any such fact during the term of this Agreement.

10.2.2 **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 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.

10.2.3 **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 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 (12) months after the date 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 ten percent (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.

### 10.3 Employment Related Contractual Obligations.

#### 10.3.1 Local Business Enterprise and Non-Discrimination in Contracting

**Ordinance.** Contractor shall comply with all applicable provisions of San Francisco Administrative Code Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. **Include the following green text if LBE subcontracting applies; otherwise delete.** Contractor shall utilize LBE Subcontractors for at least **[enter percentage]** 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.

➔ **SF Labor and Employment Code Article 111 MCO:** To determine if MCO applies, see [MCO Requirements and Applicability](#). If MCO does not apply or is waived, delete Section 10.3.2 below and replace with **Reserved (Minimum Compensation Ordinance)**.

10.3.2 **Minimum Compensation Ordinance.** San Francisco Labor and Employment Code Article 111 applies to this Agreement. Contractor shall pay covered employees no less than the minimum compensation required by Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

➔ **SF Labor and Employment Code Article 121, Health Care Accountability Ordinance,** applies if the Grantee is a **for-profit** organization with **more than twenty (21+)** employees worldwide, **OR** a **non-profit** organization with **more than fifty (51+)** employees worldwide with at least one employee working in San Francisco. If HCAO does not apply or is waived,

delete Section 10.8 below and replace with **Reserved (Health Care Accountability Ordinance)**.

10.3.3 **Health Care Accountability Ordinance.** San Francisco Labor and Employment Code Article 121 applies to this Agreement. Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 121.3 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 Article 121, 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 Article 121. 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.

→ **SF Administrative Code Chapter 83 FSHP:** To determine if FSHP applies, see [FSHP Requirements and Applicability](#). If FSHP does not apply or is waived, delete Section 10.3.4 below and replace with **Reserved (First Source Hiring Program)**.

10.3.4 **First Source Hiring Program.** Contractor must comply with all of the applicable 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.

→ **Working with Minors.** Insert the following section if Contractor or any subcontractor is providing services at a City park, playground, recreational center or beach in accordance with California Public Resources Code Section 5164. Otherwise delete Section 10.3.5 below and replace with **Reserved (Working with Minors)**.

10.3.5 **Working with Minors.** Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Contractor, or any subcontractor, is providing services to City involving the supervision or discipline of minors or where Contractor, or any subcontractor, will be working with minors in an unaccompanied setting on more than an incidental or occasional basis, Contractor and any subcontractor shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for such positions and/or prohibiting employment of certain persons including but not limited to California Penal Code Section 290.95.

10.3.6 **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.

→ **Federal or State Funds.** Include the following paragraph if the Contractor will be paid with federal or state funds. If not, delete the section.

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the **[add the following if using Federal funds]** Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) **[add the following if using State funds]** or California Drug-Free Workplace Act of 1990 Cal. Gov. Code, § 8350 et seq.

→ **Article 131 Nondiscrimination.** To learn more about Article 131 compliance, see [Article 131 Requirements and Applicability](#). The following clause is not required if the Agreement value is **less than or equal to the Minimum Competitive Amount**. If that condition exists, or Article 131 is waived, please delete Section 10.3.7 below and replace with **Reserved (Nondiscrimination in Contracts)**.

10.3.7 **Nondiscrimination in Contracts.** Contractor shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

→ **SF Labor and Employment Code Article 131 Compliance:** To learn more about Article 131 compliance, see [Article 131 Requirements and Applicability](#). The following clause is not required if the Agreement value is **less than or equal to the Minimum Competitive Amount**. If that condition exists, or Article 131 is waived, please delete Section 10.3.8 below and replace with **Reserved (Nondiscrimination in the Provision of Employee Benefits)**.

10.3.8 **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. 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 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 Article 131.2.

#### 10.4 **Environmental Related Contractual Obligations.**

→ **Packaged Water.** Include the following section if the services under this Agreement include the sale, provision, or distribution of water. If the following section is not applicable or waived, delete Section 10.4.1 and replace with **Reserved (Packaged Water Prohibition).**

10.4.1 **Packaged Water Prohibition.** The scope of Services includes the sale, provision, or distribution of water to or on behalf of City. Contractor agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

10.4.2 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.4.3 **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.

→ **Sugar-Sweetened Beverages.** Include the following section if the services under this Agreement include the sale, provision, or distribution of beverages. If the following section is not applicable or waived, delete Section 10.4.4 below and replace with **Reserved (Sugar-Sweetened Beverage Prohibition).**

10.4.4 **Sugar-Sweetened Beverage Prohibition.** The scope of Services in this Agreement includes the sale, provision, or distribution of beverages to or on behalf of City. Contractor agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

→ **SF Administrative Code 12Y Slavery Era Disclosure:** Insert the following section for any Agreement in which the Contractor is providing (1) insurance or insurance services, (2) financial services, or (3) textiles. The clause is not required if the Agreement is value is **less than the Minimum Competitive Amount**, or if other waivers or exemptions apply. If this section does not apply or is waived, delete Section 10.5 below and replace with **Reserved (Slavery Era Disclosure).**

10.5 **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.

→ If the Contractor is not a nonprofit, delete Section 10.6 below and replace with **Reserved (Nonprofit Contractor Obligations).**

10.6 **Nonprofit Contractor Obligations.**

10.6.1 **Good Standing.** If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General’s Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City’s request, Contractor shall provide documentation demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General’s Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

➔ **Public Access to Nonprofit Records and Meetings.** The clause is not required if the Agreement value is **less than \$1,000,000 per fiscal year**, or if other waivers or exemptions apply. If that condition exists, delete Section 10.6.2 below and replace with **Reserved (Public Access to Nonprofit Records and Meetings)**.

10.6.2 **Public Access to Nonprofit Records and Meetings.** If Contractor is a nonprofit organization, provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries), and receives a cumulative total per year of at least \$1,000,000 in City or City-administered funds, 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.

➔ **If this is a DAS-CDA Funded AGREEMENT, Include the following section (even if grant is less than \$100,000). If not, delete.**

10.7 **Compliance with California Department on Aging.** If grant is in excess of \$100,000 in California Department of Aging Funding, grantee is required to complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying”, Form LLL to be found at:

[https://apply07.grants.gov/apply/forms/sample/SFLLL\\_2\\_0-V2.0.pdf](https://apply07.grants.gov/apply/forms/sample/SFLLL_2_0-V2.0.pdf)

[https://apply07.grants.gov/apply/forms/sample/GG\\_LobbyingForm-V1.1.pdf](https://apply07.grants.gov/apply/forms/sample/GG_LobbyingForm-V1.1.pdf)

## 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:	Name: <b>CM name</b> Title: <b>CM Title</b> Agency: Human Services Agency Address: POB 7988, GB00, San Francisco, CA 94120-7988 Email: <b>CM email</b> Phone: <b>CM phone</b>
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To Contractor:	Name: Title: Company: Address: Email: Phone:
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Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by e-mail, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least ten (10) days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

**11.2 Compliance with Laws Requiring Access for People with Disabilities.**

11.2.1 Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to people with disabilities. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

11.2.2 Contractor shall provide technical assistance to City when responding to reasonable accommodation requests from City employees respecting their use of the information content and technology (“ICT”) and/or Services provided under this Agreement.

➔ **Web and Mobile Content Accessibility.** Federal law requires that City websites, online applications, and digital content be accessible to people with physical, sensory, or cognitive disabilities by meeting the Web Content Accessibility Guidelines (“WCAG”) 2.1, Level AA standards, as specified in the Department of Justice’s Title II Rule on the accessibility of web content and mobile applications. This requirement includes web and mobile app content generated by City contractors on behalf of City. If this Agreement will require contractor to create, host or publish publicly available web or mobile content for City, include Section 11.2.3. If this Agreement is for a program funded in whole or part by the federal government, additional accessibility requirements may be imposed by the granting agency under Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794d) and the applicable Revised Section 508 Standards published by the U.S. Access Board (<https://www.access-board.gov/ict/>). Departments should check with the federal funding agency to determine whether any additional requirements apply. If the following section is not applicable, delete Section 11.2.3 below and replace with **Reserved (Web and Mobile Content Accessibility)**.

11.2.3 Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sec. 1201 et seq.), including the Web Content

Accessibility Guidelines (WCAG) 2.1, Level AA, as specified in the Department of Justice’s Title II Rule on the accessibility of web content and mobile applications, **if required by a federal funding agency, add the following:** Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and the applicable Revised Section 508 Standards published by the U.S. Access Board (<https://www.access-board.gov/ict/>), as amended from time to time. Contractor shall ensure that all ICT provided under this Agreement fully conforms to the Department of Justice’s Title II rules **if applicable** and the applicable Revised 508 Standard, prior to delivery and before the City’s final acceptance of the Services and/or Deliverables.

**11.3 Incorporation of Recitals.** The matters recited in the Recitals section of this Agreement are a substantive portion of this Agreement and are hereby incorporated into and made part of this Agreement.

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all City records related to its formation, Contractor’s performance of Services, and City’s payment may be subject to the California Public Records Act, (California Government Code § 7920.000 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 by written instrument executed and approved in the same manner as this Agreement. **if LBE subcontracting requirements apply and the contract amount is \$50,000 or more then add the following sentence:** 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 twenty percent (20%).

**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. The city may elect, in its sole discretion, to participate in informal dispute resolution proceedings. Disputes will not be subject to binding arbitration. 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 City. Neither Party will be entitled to legal fees or costs for matters resolved under Section 11.6.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against City until a written claim therefor has been presented to and rejected by 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 without regard to conflict of law provisions. 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, including the appendices, 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 City’s Charter, codes, ordinances, and duly adopted rules and regulations of City and of all state and federal laws in any manner applicable to 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.** If the Appendices to this Agreement include any Contractor terms, Contractor agrees that in the event of any discrepancy, inconsistency, gap, ambiguity, or conflict in language between City’s terms and Contractor’s terms, City’s terms shall take precedence. Any hyperlinked terms included in Contractor’s terms shall have no legal effect.

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 any City Data under this Agreement, and in no event later than twenty-four (24) hours after Contractor 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 City’s instruction and requests, including, without limitation, any retention schedules and/or

litigation hold orders provided by City to Contractor, independent of where City Data is stored.

11.15 **No Third-Party Beneficiaries.** The representations, warranties and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and they shall not be construed as conferring any rights on any other persons.

## Article 12 Department Specific Terms

**Use this Article for Department specific terms, if any, beginning with Section 12.1.**

12.1 **Reserved.**

## Article 13 Data and Security

➔ **Data and Security.** Consider the type of information involved and consult with the City Attorney to determine if Article 13 should include additional terms such as data at rest or transmission security, breach notification requirements, and additional non-disclosure requirements.

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 **City Data; Confidential Information.** In the performance of Services, Contractor may have access to, or collect on City’s behalf, City Data, which may include proprietary or Confidential Information that if disclosed 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.

➔ **PCI Requirements.** Include the following section if services and products are used to process, transmit or store cardholder data for payment processing on behalf of the City (including credit card payments) and/or connect with the cardholder data environment (“CDE”), as that term is defined by the PCI Security Standards Council (“PCI SSC”). Any deviation from these requirements must be approved in writing by the Office of the Treasurer and Tax Collector. If this is not applicable, delete Section 13.2 below and replace with **Reserved (Payment Card Industry (“PCI”) Requirements).**

**13.2 Payment Card Industry (“PCI”) Requirements.** Contractors providing services and products used to process, transmit or store cardholder data and/or connect with the cardholder data environment (CDE”) are required to support City by ensuring services and products deployed in accordance with vendor instruction will not prevent the City from implementing controls mandated by the Payment Card Industry Data Security Standard (“PCI DSS”) requirements and are subject to the following requirements:

13.2.1 To the extent Contractor is deemed to be a Service Provider, as that term is defined by the PCI DSS, Contractor shall provide the City with a copy of a valid, compliant and executed Attestation of Compliance (“AOC”) associated with a Report on Compliance (“ROC”) applicable to the products and /or services being provided under this Agreement prior to the effective date of this Agreement and at least annually thereafter.

13.2.2 The Contractor who processes, stores or transmits cardholder data on behalf of City shall comply with evolving payment brand specifications and with security programs such as and without limitation Visa Cardholder Information Security Program (“CISP”) and MasterCard Site Data Protection (“SDP”) programs.

13.2.3 Bank Accounts. Collections that represent funds belonging to 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.

➔ **Business Associate Agreement.** This Subsection 13.3 only applies if one of the following City Departments, which are the designated Health Care Components under the City’s Hybrid Entity designation for HIPAA compliance, is involved in this Agreement: DPH, SFFD, HSS, CAT, TTX, DT

➔ **Note:** Use the CCSF BAA Decision Tree to determine whether a BAA is required to be attached to this Agreement. All other City Departments should delete Section 13.3 below and replace it with **Reserved (Business Associate Agreement)**.

**13.3 Business Associate Agreement.** The Parties acknowledge that City is designated as a Hybrid Entity as defined in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and all Health Care Components of the City, including a City department involved in this Agreement, are required to comply with the HIPAA rules governing the access, use, disclosure, transmission, storage, and security of protected health information (“PHI”).

For purposes of this Agreement, Parties agree that if Contractor is performing a service or function for or on behalf of a City department that is a Health Care Component, where such service or function makes Contractor a Business Associate of City, Contractor must comply with the obligations and conditions contained in the Business Associate Agreement (“BAA”) that shall be attached to this Agreement as Appendix [insert the appendix letter] and incorporated as though fully set forth herein. Parties agree that if Contractor is not performing a service or function that makes Contractor a Business Associate of City, a BAA is not required and will not be attached to this Agreement. Contractor, however, must still

comply with any data privacy and security laws that apply to Contractor, including, but not limited to, HIPAA, CMIA (Cal. Civ. Code Sec. 56 et seq.), Cal. Welf. & Inst. Code Sec. 5328, and 42 CFR Part 2.

#### 13.4 Management of City Data.

**13.4.1 Use of City Data.** Contractor agrees to hold City Data received from, or created or collected on behalf of, City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by City. Access to City Data must be strictly controlled and limited to Contractor’s staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use City Data solely for performing its obligations under the Agreement and not for Contractor’s own purposes or later use, provided, however, that no City Data may be used by Contractor to train, modify or improve any Artificial Intelligence Systems or Models without City’s prior written consent, which may be withheld or withdrawn at City’s sole discretion. Nothing herein shall be construed to confer any license or right to City Data, 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 and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

➔ Departments should consult with their Deputy City Attorney to review the applicability of Section 13.4.2 (“Use of Generative Artificial Intelligence in Deliverables”) to the specific transaction.

**13.4.2 Use of Generative Artificial Intelligence in Deliverables.** Contractor is prohibited from using Generative Artificial Intelligence in the development of Deliverables without City’s prior written consent. Contractor represents and warrants to City that Deliverables will not be developed in a manner that conflicts with the City’s rights in and to the Deliverables under Article 9, “Rights in Deliverables,” or the City Data confidentiality and security requirements under Article 13, “Data and Security,” of this Agreement.

**13.4.3 Disposition of City Data.** Except as otherwise provided for in this Agreement, upon City’s request, termination, or expiration of this Agreement, or the expiration of any required document retention period or litigation hold, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all City Data given to, or collected or created by Contractor on City’s behalf, which includes all original media. Once Contractor has received written confirmation from City that the City Data has been successfully transferred to City, Contractor shall, within ten (10) business days, securely

dispose, clear, purge, and/or physically destroy all copies of all City Data from its servers, files, hosted environments used in performance of this Agreement (including subcontractors' environments), work stations used to process or produce the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such secure disposal 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.

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

**13.6 Loss or Unauthorized Access to City's Data; Security Breach Notification.** Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any "Leak") within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. **Add the following sentence if this contract involves sharing sensitive data with the Contractor. Otherwise, delete: Contractor shall pay for the provision to the affected individuals of twenty-four (24) months of free credit monitoring services, if the Leak involved information of a nature reasonably necessitating such credit monitoring.]** The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

**13.7 Cybersecurity Risk Assessment.** If a Cybersecurity Risk Assessment ("CRA") was required before entering the Agreement, Contractor must complete an annual CRA to demonstrate that it has maintained the data privacy and information security program required for City contractors. If Contractor does not satisfactorily complete an annual CRA, the City shall have the right, without further obligation or liability to Contractor, to terminate this Agreement or exercise any of its other remedies hereunder. Any failure by Contractor to comply with this Section shall be a material breach of this Agreement.

## Article 14 Appendices

**Appendices.** The following appendices ("Appendices" in the plural and each an "Appendix" in the singular) are hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

Appendix A, Services to be Provided

Appendix B, Calculation of Charges (for Cost Reimbursement contracts, change title to **Budget** throughout document)

Appendix C, Method of Payment (Select the appropriate payment term version)

Appendix D, Permitted Subcontractor (if applicable)  
Appendix G, Dispute Resolution (Non-Profits only)  
Appendix H, Confidentiality and Privacy (if applicable)  
Appendix V, Insurance Waiver (if applicable)  
Appendix W, Additional Terms, HIPAA Compliance (if applicable)  
Appendix W, HIPPA Business Associate Addendum, (if applicable)  
Appendix X, Federal Award Information  
Appendix Y1, Federal Requirements for Subrecipients  
Appendix Y2, Federal Requirements for Subcontractors  
Appendix Z1, Additional HUD Subrecipient requirements  
Appendix Z2. Additional ACYF Subrecipient/Subcontractor requirements

## Article 15 MacBride And Signature

➔ **MacBride.** The following clause is not required if the Agreement value is Minimum Competitive Amount or less, or if other waivers or exemptions apply. If that condition exists, delete Section 15.1 below and replace with **Reserved (MacBride Principles - Northern Ireland).**

15.1 **MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code Chapter 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 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]

\_\_\_\_\_  
**Trent Rhorer or Kelly Dearman**  
**Executive Director**  
**Human Services Agency or Disability and Aging Services**

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

Approved as to Form:

Cell Phone:  
Email:

David Chiu  
City Attorney

City Supplier Number: [Supplier Number]

By: \_\_\_\_\_  
**Valerie Lopez**  
Deputy City Attorney

Approved:  
Sailaja Kurella  
Director of the Office of Contract Administration,  
and Purchaser

By: \_\_\_\_\_  
[Name: \_\_\_\_\_]

**In the footer, the page number should match “of” number, such as “23 of 23”**