

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Section 2. Section 2 **Term of the Agreement of the Agreement** currently reads as follows:

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from **December 1, 2016 to November 30, 2022.**

Such section is hereby amended in its entirety to read as follows:

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from **December 1, 2016 to November 30, 2026.**

2b. Section 4. Section 4 **City's Payment Obligation of the Agreement** currently reads as follows:

4. City's Payment Obligation. The City will make a good faith effort to pay all invoices within 30 days of billing. In no event will the City pay any late fees or charges for payments made after the 30 day period. Contractor and the City understand and intend that the obligations of the City to pay maintenance charges hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City. The City shall pay maintenance charges, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City. Maintenance Payments shall be in consideration for the maintenance services provided by Contractor during the applicable fiscal year in which such payments are due. In no event shall the amount of this Agreement **exceed One Hundred Twenty One Thousand Four Hundred Twenty Nine Dollars and Thirteen Cents (\$121,429.13)**. The breakdown of costs associated with this Agreement is provided for in Appendix B, Appendix B-1 "Calculation of Charges."

Such section is hereby amended in its entirety to read as follows:

4. City's Payment Obligation. The City will make a good faith effort to pay all invoices within 30 days of billing. In no event will the City pay any late fees or charges for payments made after the 30 day period. Contractor and the City understand and intend that the obligations of the City to pay maintenance charges hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City. The City shall pay maintenance charges, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City. Maintenance Payments shall be in consideration for

the maintenance services provided by Contractor during the applicable fiscal year in which such payments are due. In no event shall the amount of this Agreement **exceed One Hundred Eighty-Two Thousand Seven-Hundred and Ninety-Five Dollars (\$182,795)**. The breakdown of costs associated with this Agreement is provided for in Appendix B-2 “Calculation of Charges.”

2c. Section 17. Section 17 Assignment of the Agreement currently reads as follows:

17. Assignment. Notwithstanding any other provision in this Agreement, in no event shall all or any portion of this Agreement be assigned without the prior written approval of Purchasing and the City Attorney.

Such section is hereby amended in its entirety to read as follows:

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

2d. Prevailing Wage. The following is hereby added to the Agreement as Section 43:

43. Payment of Prevailing Wages

43.1. Covered Services. Services to be performed by Contractor under this Agreement may involve the performance of trade work covered by the provisions of Section 6.22(e) [Prevailing Wages] of the Administrative Code or Section 21C [Miscellaneous Prevailing Wage Requirements] (collectively, “Covered Services”). The provisions of Section 6.22(e) and 21C of the Administrative Code are incorporated as provisions of this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

43.2. Wage Rates. The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Copies of the prevailing wage rates as fixed and determined by the Board of Supervisors are available from the Office of Labor Standards and Enforcement (“OLSE”) and on the Internet at <http://www.dir.ca.gov/DLSR/PWD> and <http://sfgov.org/olse/prevailing-wage>. Contractor agrees

that it shall pay not less than the prevailing wage rates, as fixed and determined by the Board, to all workers employed by Contractor who perform Covered Services under this Agreement.

43.3. Subcontract Requirements. As required by Section 6.22(e)(5) of the Administrative Code, Contractor shall insert in every subcontract or other arrangement, which it may make for the performance of Covered Services under this Agreement, a provision that said subcontractor shall pay to all persons performing labor in connection with Covered Services under said subcontract or other arrangement not less than the highest general prevailing rate of wages as fixed and determined by the Board of Supervisors for such labor or services.

43.4. Posted Notices. As required by Section 1771.4 of the California Labor Code, Contractor shall post job site notices prescribed by the California Department of Industrial Relations (“DIR”) at all job sites where services covered by Chapter 6.22 are to be performed.

43.5. Payroll Records. As required by Section 6.22(e)(6) of the Administrative Code and Section 1776 of the California Labor Code, Contractor shall keep or cause to be kept complete and accurate payroll records for all trade workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services on the project, including apprentices, his or her 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 undertake the performance of 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 the City and its authorized representatives and the DIR.

43.6. Certified Payrolls. Certified payrolls shall be prepared pursuant to Administrative Code Section 6.22(e)(6) and California Labor Code Section 1776 for the period involved for all employees, including those of subcontractors, who performed labor in connection with Covered Services. Contractor and each subcontractor performing Covered Services shall submit certified payrolls to the City and to the DIR electronically. Contractor shall submit payrolls to the City via the reporting system selected by the City. The DIR will specify how to submit certified payrolls to it. The City will provide basic training in the use of the reporting system at a scheduled training session. Contractor and all subcontractors that will perform Covered Services must attend the training session. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

43.7. Compliance Monitoring. Covered Services to be performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and /or the OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements, and agrees to take the specific steps and actions as required by Section 6.22(e)(7) of the Administrative Code. Steps and actions include but are not limited to requirements that: (i) the Contractor will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on Public Works Contractor by

the Charter and Chapter 6 of the San Francisco Administrative Code; (ii) the Contractor agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (iii) the contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iv) the Contractor shall prominently post at each job-site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (v) that the Labor Standards Enforcement Officer may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the Charter and this Chapter on Public Works Contractors. Failure to comply with these requirements may result in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

43.8. Remedies. Should Contractor, or any subcontractor who shall undertake the performance of any Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Contract, subcontract or other arrangement 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 Administrative Code Section 6.22 (e) and/or California Labor Code Section 1775. The 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.

2e. Appendix B-2 Calculation of Charges. Appendix B-1 Calculation of Charges is hereby replaced in its entirety by Appendix B-2 Calculation of Charges, attached to this Amendment and fully incorporated within the Agreement. To the extent the Agreement refers to Appendix B or Appendix B-1 in any place, the true meaning shall be Appendix B-2, which is a correct and updated version.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after **the date of this Amendment.**

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

CONTRACTOR

Recommended by:

Tractel Inc. – Swingstage Division West

Michael Lambert
City Librarian
Public Library

Kirit Parmar
Service Supervisor

City vendor number: 0000009 [REDACTED]

Approved as to Form:

David Chiu
City Attorney

By: _____
Christina Fletes-Romo
Deputy City Attorney

Approved:

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

Attached:

**City and County of San Francisco
Office of Contract Administration
Purchasing Division**

**First Amendment
PeopleSoft Contract ID 1000003138**

THIS AMENDMENT (this "Amendment") is made as of **February 10, 2020**, in San Francisco, California, by and between **Tractel Inc. – Swingstage Division West** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period, increase the contract amount, and update standard contractual clauses;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term "Agreement" shall mean the Agreement dated October 17, 2016, between Contractor and City, as amended by this First Amendment dated February 10, 2020.

1b. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division ("CMD"). Wherever "Human Rights Commission" or "HRC" appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean "Contract Monitoring Division" or "CMD" respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Section 2 Term of the Agreement. Section 2 Term of the Agreement of the Agreement currently reads as follows:

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from **December 1, 2016 to November 30, 2019**. In addition, the City shall have one option to extend the term for a period of three years to provide the services set forth in Appendix A, "Description of Services," provided that the "Maintenance Fees" for subsequent years as listed in Appendix B, "Calculation of Charges" shall be no more than 3% greater than the fee for the immediately prior year. The City may exercise this option at its sole absolute discretion.

Such section is hereby amended in its entirety to read as follows:

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from **December 1, 2016 to November 30, 2022**.

2b. Section 4 City's Payment Obligation. Section 4 City's Payment Obligation of the Agreement currently reads as follows:

4. City's Payment Obligation. The City will make a good faith effort to pay all invoices within 30 days of billing. In no event will the City pay any late fees or charges for payments made after the 30 day period. Contractor and the City understand and intend that the obligations of the City to pay maintenance charges hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City. The City shall pay maintenance charges, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City. Maintenance Payments shall be in consideration for the maintenance services provided by Contractor during the applicable fiscal year in which such payments are due. In no event shall the amount of this Agreement **exceed Seventy Six Thousand, Five Hundred and Fifteen Dollars (\$76,515)**. The breakdown of costs associated with this Agreement is provided for in Appendix B "Calculation of Charges."

Such section is hereby amended in its entirety to read as follows:

4. City's Payment Obligation. The City will make a good faith effort to pay all invoices within 30 days of billing. In no event will the City pay any late fees or charges for payments made after the 30 day period. Contractor and the City understand and intend that the obligations of the City to pay maintenance charges hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City. The City shall pay maintenance charges, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on

the Treasurer of the City. Maintenance Payments shall be in consideration for the maintenance services provided by Contractor during the applicable fiscal year in which such payments are due. In no event shall the amount of this Agreement **exceed One Hundred Twenty One Thousand Four Hundred Twenty Nine Dollars and Thirteen Cents (\$121,429.13)**. The breakdown of costs associated with this Agreement is provided for in Appendix B, Appendix B-1 "Calculation of Charges."

2c. Limitations on Contributions. Section 18 Limitations on Contributions is hereby replaced in its entirety as follows:

18. Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

2d. Withholding. Section **16.a Withholding** is hereby added to Section 16 "Taxes" to read as follows:

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

2e. Appendix B-1. Calculation of Charges. Appendix B of the Agreement is hereby amended to add Appendix B-1 and is attached to this Amendment.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

CONTRACTOR

Recommended by:

Tractel Inc. – Swingstage Division West

DocuSigned by:
Michael Lambert
C9DF0B3992E246F...

DocuSigned by:
[Signature]
09C526012BD24B6...

Michael Lambert
City Librarian
San Francisco Public Library

Kirit Parmar
Service Supervisor
7 Mt.Lassen Drive, Suite D-132
San Rafael, CA. 94903

City vendor number: 0000009

Approved as to Form:

Dennis J. Herrera
City Attorney

By: DocuSigned by:
Bradley A. Russi
59C988440A414B4...
Bradley A. Russi
Deputy City Attorney

Approved:

DocuSigned by:
Shawn Peters
C13CDA276251449...
Alaric Degrafinried
Director of the Office of Contract
Administration, and Purchaser

**Appendix B-1
Calculation of Charges**

1. Maintenance Fees:

December 1, 2019 – November 30, 2020

Annual Inspection	\$2,592.68	
Secondary Brake Rebuild Fee	\$720.36	
Pre-Use Inspection	\$1,488.32	
Total for Year 1		\$4,801.36

December 1, 2020 – November 30, 2021

Annual Inspection	\$2,683.42	
Secondary Brake Rebuild Fee	\$745.57	
Pre-Use Inspection	\$1,540.42	
Total for Year 2		\$4,969.41

December 1, 2020 – November 30, 2022

Annual Inspection	\$2,777.34	
Secondary Brake Rebuild Fee	\$771.68	
Pre-Use Inspection	\$1,594.34	
Total for Year 3		\$5,143.36

Maintenance Total		\$14,914.13
--------------------------	--	--------------------

2. Emergency Service Not Covered by Maintenance: \$30,000

Amendment Total:	\$44,914.13
-------------------------	--------------------

Agreement Amount:	\$121,429.13
--------------------------	---------------------

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

Equipment Maintenance Agreement

This Agreement is made this 17th day of October 2016, in the City and County of San Francisco, State of California, by and between: Tractel Inc. – Swingstage Division West, hereinafter referred to as “Contractor,” and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing.”

Recitals

WHEREAS, the Public Library (“Department”) wishes to enter into a contract with Contractor to maintain the Department’s exterior window washing system that is proprietary to Contractor; and,

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

NOW, THEREFORE, City and Contractor agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the City's Controller, and any amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year in the event funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

This Section shall control against any and all other provisions of this Agreement.

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from **December 1, 2016 to November 30, 2019**. In addition, the City shall have one option to extend the term for a period of three years to provide the services set forth in Appendix A, "Services to be Provided by Contractor," provided that the “Maintenance Fees” for subsequent years as listed in Appendix B, “Calculation of Charges” shall be no more than 3% greater than the fee for the immediately prior year. The City may exercise this option at its sole absolute discretion.

3. No Automatic Renewal. Notwithstanding anything to the contrary contained in this Agreement (including, without limitation, any terms and conditions of Contractor attached hereto): (a) in no event shall the term of this Agreement be longer than the initial term expressly stated in this Agreement; (b) any automatic renewal or extension (whether or not conditioned upon any notice or absence thereof from either party) or any similar “evergreen” provision shall be deemed null and void ab initio; and (c) the term of this Agreement shall not be extended or renewed except by written agreement duly authorized, executed and delivered by City. In the event of any inconsistency within this Agreement relating to the

duration of the initial term hereof, the shorter initial term shall govern. If no initial term is stated in this Agreement, then the term shall be one year from the date on which the term commences.

4. City's Payment Obligation. The City will make a good faith effort to pay all invoices within 30 days of billing. In no event will the City pay any late fees or charges for payments made after the 30 day period. Contractor and the City understand and intend that the obligations of the City to pay maintenance charges hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City. The City shall pay maintenance charges, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City. Maintenance Payments shall be in consideration for the maintenance services provided by Contractor during the applicable fiscal year in which such payments are due. In no event shall the amount of this Agreement exceed **Seventy Six Thousand, Five Hundred and Fifteen Dollars (\$76,515)**. The breakdown of costs associated with this Agreement is provided for in Appendix B "Calculation of Charges."

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

6. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

7. Force Majeure. Contractor shall not be liable for failure to maintain Equipment when such failure is due to causes beyond its reasonable control, such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities, and in such event the Contractor shall perform as soon as such cause is removed.

8. Indemnification. Contractor shall indemnify and save harmless the City from and against any and all loss, cost, damage, injury, liability, and claims, including those arising out of injury to or death of a person, or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City

or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except where such loss, damage, injury, liability or claim is the result of active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or contract on, Contractor, its subcontractor or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent; this obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorney's fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

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

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

11. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

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

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

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

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

12. Provisions Controlling. Contractor further agrees that in the event of conflicting language between this "Equipment Maintenance Agreement" and Contractor's printed form should any be attached, the provisions of this "Equipment Maintenance Agreement" shall take precedence.

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

14. Termination

a. **Termination for Cause.** In the event Contractor fails to perform any of its obligations under this Agreement, this Agreement may be terminated and all of Contractor's rights hereunder ended. Termination will be effective after ten days written notice to Contractor. No new work will be undertaken after the date of receipt of any notice of termination, or five days after the date of the notice, whichever is earlier. In the event of such termination, Contractor will be paid for those services performed under this Agreement to the satisfaction of the City, up to the date of termination. However, City may offset from any such amounts due Contractor any liquidated damages or other costs City has or will incur due to Contractor's non-performance. Any such offset by City will not constitute a waiver of any other remedies City may have against Contractor for financial injury or otherwise.

b. **Termination for Convenience.** City may terminate this Agreement for City's convenience and without cause at any time by giving Contractor thirty days written notice of such termination. In the event of such termination, Contractor will be paid for those services performed,

pursuant to this Agreement, to the satisfaction of the City up to the date of termination. In no event will City be liable for costs incurred by Contractor after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not reasonable or authorized under this section. This section shall not prevent Contractor from recovering costs necessarily incurred in discontinuing further work under the contract after receipt of the termination notice.

c. **Obligations upon Termination.** Upon termination of this Agreement, Contractor will submit an invoice to City for an amount which represents the value of its work or services actually performed prior to the effective date of termination for which Contractor has not previously been compensated, except that with respect to reimbursement for Contractor's services, in no event will the compensation paid for the month in which termination occurs be greater than the scheduled monthly fee multiplied by a fraction, the numerator of which will be the days in the month elapsed prior to the termination and the denominator of which shall be 31. Upon approval and payment of this invoice by City, City shall be under no further obligation to Contractor monetarily or otherwise.

d. **Survival.** This section and the following sections of this Agreement shall survive termination or expiration of this Agreement

- | | |
|---|--|
| 6. Submitting False Claims; Monetary Penalties. | 15. Audit and Inspection of Records. |
| 8. Indemnification. | 16. Taxes. |
| 9. Liability for Damage to Equipment. | 21. Waiver. |
| 10. Incidental and Consequential Damages. | 22. Governing Law. |
| 11. Insurance | 23. Entire Agreement; Modifications. |
| 12. Provisions Controlling. | 38. Protection of Private Information. |

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

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

17. Assignment. Notwithstanding any other provision in this Agreement, in no event shall all or any portion of this Agreement be assigned without the prior written approval of Purchasing and the City Attorney.

18. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

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

To City: Roberto Lombardi
Facilities Director
San Francisco Public Library
100 Larkin Street
San Francisco, CA 94102
Tel: (415) 557-4485
E-mail: Roberto.Lombardi@sfpl.org

To Contractor: Gene Gutierrez
Division West Area Manager
Tractel Inc
168 Mason Way, Unit B2
City of Industry, CA 91746
Tel: (800) 675-6727
E-mail: gene.gu@tractel.com

Any notice of default must be sent by registered mail.

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

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

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

23. Entire Agreement; Modifications. This Agreement, together with the Appendices hereto, constitutes the entire Agreement between the parties and may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form). All agreements between the parties are included herein and no promises or statements have been made by either party unless endorsed hereon in writing. No change or waiver of any provisions hereof shall be valid unless made in writing with the consent of both parties and executed in the same manner as this Agreement. Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

24. Local Business Enterprise Utilization; Liquidated Damages

a. **The LBE Ordinance.** Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. **Compliance and Enforcement**

1) **Enforcement.** If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of CMD") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

26. Nondiscrimination; Penalties

a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

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

c. **Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

27. Consideration of Criminal History in Hiring and Employment Decisions.

a. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section.

Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

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

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 26(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

28. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a

part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

29. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

30. Requiring Health Benefits for Covered Employees. Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

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

32. Drug Free Workplace. Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by the Contractor, its employees, agents or assigns shall be deemed a material breach of contract.

33. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, responses to RFPs and all other records of communications between City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

34. Public Access to Meetings and Records. If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, the Contractor shall comply with and be bound by all the applicable provisions of Chapter 12L. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. The Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that

such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

35. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference.

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement.

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

6) Set the term of the requirements.

7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages.

Contractor agrees:

1) To be liable to the City for liquidated damages as provided in this section;

2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

(a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. **Subcontracts.**

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

36. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

37. Preservative-treated Wood Containing Arsenic. Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department

of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

38. Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

39. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

40. Graffiti Removal. Reserved.

41. Food Service Waste Reduction Requirements. Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

42. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.


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

CITY

CONTRACTOR

Recommended by:

Tractel Inc. - Swingstage Division West
City vendor number: 49



Luis Herrera
City Librarian
San Francisco Public Library

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

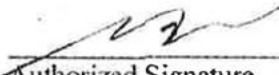
Approved as to Form:

I have read and understood paragraph 28, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

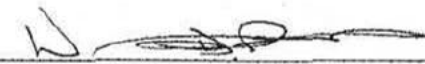
Dennis J. Herrera
City Attorney

By: 
Bradley A. Russi
Deputy City Attorney

Approved:


Authorized Signature

Geni Guerrero
Printed Name

for 
Jaci Fong
Director of the Office of Contract Administration,
and Purchaser

Division West Manager
Title

168 MASON WAY, UNIT B 2
Address

CITY OF INDUSTRY, CA 91746
City, State, ZIP

626 893-9868
Phone Number

Attachments:

- Appendix A, Services to be Provided by Contractor
- Appendix B, Calculation of Charges

RECEIVED

16 DEC -2 PM 1:05

PURCHASING DEPARTMENT

Appendix A Services to be Provided by Contractor

1. Maintenance Services

Contractor shall maintain the TravSafe Fall Prevention System, proprietary to Contractor, and other window washing equipment owned and operated by the Main Library currently located at 100 Larkin Street, San Francisco. Maintenance services shall include the following:

- clean and lubricate all mechanisms as required.
- check gearbox lubricant as required.
- inspect braking mechanisms for wear, check for proper functioning and adjust as required.
- inspect suspension cables for wear, damage and corrosion.
- check suspension fittings and suspension members.
- check and adjust as required all safety limit switch settings.
- inspect all wiring for damage or deterioration and tighten any loose connections.
- replace defective or absent cotter pins, spring pins and keepers.
- inspect and lubricate stage building face bumper rollers and engagement devices.
- check function of electrical controls.
- inspect roof anchorages, rail system or tie-downs as applicable.
- verify proper functioning of all mechanisms.
- maintain and rebuild secondary brakes

In the performance of the above duties, Contractor shall furnish all lubricants, solvents, cleaning materials, consumable supplies and incidentals. Should the service inspection reveal the need for replacement parts and/or repairs not provided under this agreement, the additional service work required shall be indicated on the service maintenance report which will be presented to the City. After reviewing the report, City shall decide whether or not to pursue such services according to the terms and conditions written in Section 3 of this Appendix.

The Contractor's responsibilities for maintaining the secondary brake system shall include complete disassembling and thoroughly cleaning them internally and externally, measuring the internal rollers (by calliper) for wear and tear or any damage to the parts. Once internal parts are cleaned and no damaged parts are found, Contractor shall reassemble the secondary break system and bench test it for proper operation, and then reinstall the BlocStops (secondary brakes) on the platform and test the system again for proper function.

Contractor shall perform one annual inspection and one "Pre-Use" inspection per year, which shall be performed to coincide with the scheduled exterior maintenance of the building. Contractor shall issue a certification upon the completion of each service inspection; this certification shall remain valid for thirty days in accordance with governing CAL/OSHA requirements. City shall schedule a mutually agreeable Maintenance Cycle timetable with the Contractor.

2. Replacement of the TravSafe Fall Prevention System

In the event that the TravSafe Fall Prevention System reaches an inoperable level, Contractor shall inform the City and obtain written approval from the City for replacing it. After receiving City's written approval to replace the system, Contractor shall work with the City to coordinate the technical removal and replacement specifications, their tasks and schedules. The cost of the replacement services shall not

exceed \$33,000.00, as written in Appendix B; Contractor shall bill the City an hourly rate not exceeding \$113.00 for all replacement services work. City shall pay for the Replacement System Equipment separate from this Agreement.

3. Emergency Service Not Covered by Maintenance

Contractor shall provide repair services to equipment failure or damage not caused by manufacture defect or reasonable wear and tear. Such instances include City's mishandling, water damages and vandalism.

City shall allocate a not-to-exceed amount, as written in Appendix B, for remediating such instances. Contractor shall be available 24 hours per day, 7 days per week, and bill the City an hourly rate of \$113.00 for the first year of the contract, plus the cost of replacement parts if needed. For subsequent years, Contractor may choose to increase the hourly rate no more than 3% per year. The replacement parts shall be billed at a maximum of 2% above Contractor's cost.

Prior to performing emergency service, Contractor must provide City a thorough quote indicating services to be performed, necessary parts, and price to City, and shall commence work only after receiving written acceptance from City.

Appendix B Calculation of Charges

1. Maintenance Fees

December 1, 2016 - November 30, 2017

Annual Inspection	\$2,361.00	
Secondary Brake Rebuild Fee	\$656.00	
Pre-Use Inspection	\$1,355.00	
Total for Year 1		\$4,372.00

December 1, 2017 - November 30, 2018

Annual Inspection	\$2,432.00	
Secondary Brake Rebuild Fee	\$676.00	
Pre-Use Inspection	\$1,396.00	
Total for Year 2		\$4,504.00

December 1, 2018 - November 30, 2019

Annual Inspection	\$2,505.00	
Secondary Brake Rebuild Fee	\$696.00	
Pre-Use Inspection	\$1,438.00	
Total for Year 3		\$4,639.00

Total		\$13,515.00
-------	--	-------------

2. Replacement of the TravSafe Fall Prevention System

Engineering and Field Coordination	\$4,620.00
Field Labor (removal and disposal of old system)	\$5,940.00
Field Labor (installation and adjustment of new system)	\$22,440.00

Total	\$33,000.00
-------	-------------

3. Emergency Service Not Covered by Maintenance	\$30,000.00
---	-------------

Agreement Amount:	\$76,515.00
-------------------	-------------

Continuing PSC #11945, 10-21 - Sample Request from ACC to OCA

From: [CCSF IT Service Desk](#)
To: [Fernando, Ian \(ADM\)](#); [Moayed, Taraneh \(ADM\)](#); [ADM-CSC Unions List](#)
Subject: Use of OCA's Continuing CSC Approval (OCACON0001805, PS Contract ID: 1000018347)
Date: Wednesday, October 26, 2022 5:41:43 PM
Attachments: [information_severity_ws_icon.png](#)
[ccsfLogoPic.png](#)
[TC10101_Mod_1.docx](#)
[Proprietary Letter.pdf](#)
[Document Checklist.pdf](#)
[Original Contract.pdf](#)



Contract Management

Office of Contract Administration

You are receiving this notification because a City department has elected to use OCA's Continuing CSC Approval for Proprietary Software as a Service, Proprietary Software Support, or Proprietary Equipment Maintenance/Installation in lieu of a full CSC Commission Hearing.

The contract has been assigned to an OCA buyer and is currently pending review and approval. Attached to this request is a copy of the proposed contract and letter from supplier confirming the proprietary nature of the Software as a Service, Proprietary Software Support, or Proprietary Equipment Maintenance/installation. Should you object to the use of CSC Continuing Approval for this contract, please reply to OCA buyer **Taraneh Moayed** within 3 business days from this request.

Upon receiving your objection, OCA will hold the contract until such time a resolution has been reached between the requesting City department and the objecting union(s).

Request details:

Number: OCACON0001805
Requesting Department: ADM
Dept. Contract Admin: Ian Fernando
Dept. Contract Admin email: ian.fernando@sfgov.org
Dept. Contract Admin Phone: (628) 652-1609
Supplier Name: H L P INC
Supplier ID: 0000019139
PS Contract ID: 1000018347
Executed Contract Start Date: 2020-01-01
Executed Contract End Date: 2027-12-31
Executed Contract NTE: \$200,000.00
CSC Continuing Amount: \$200,000.00
OCA's CSC Continuing Approval for:
 Off-the-Shelf Standard Proprietary Software Maintenance without Technical Services

Contract Overview: Software Equipment Maintenance & Support for Chameleon Program

Ref:TIS3808450_R5Go7cUC04Rfyz4gi5pH



HLP, INC.
9888 W Belleview Ave #110
Littleton, CO 80123

phone: 800.459.8376
fax: 866.844.3924
www.ChameleonBeach.com

Combined Sole Source Document 2019/2020

HLP, INC. is the sole developer, owner and marketing source for the "Chameleon/CMS" and "Chameleon Public Access" licensed, copyrighted software programs. Chameleon/CMS includes the wireless field service program and wireless FSU mapping program. Chameleon Public Access includes "ChamCam" imaging program, "ChamGPS" vehicle tracking program, and "PAWWW" kiosk program. It also includes "Knowledge Rocket", "WebChameleon", and "Scrubber" programs for internet functions. These products are not available through distributors or dealerships.

HLP also offers a "Certified Data Connect, (CDC), License" that allows other, outside HLP, software products to connect to the Chameleon proprietary database in a way that will ensure the integrity of the database. As part of this process, the "LockBox" software program is offered to allow this outside program to automatically enter data back into the proprietary Chameleon database. The LockBox program can only be maintained and supported by HLP.

There are no comparable products on the market that can provide this interaction and integration. They are all proprietary products that are licensed and copyrighted by HLP, INC. All services contracted pertaining to the installation, customization, conversion, maintenance, support, and training can only be obtained through HLP, INC.

Keith Brakey
Chief Operating Officer



Contract Management Office of Contract Administration

PEOPLESOFT DOCUMENT CHECKLIST

Based on your responses, below is a list of required supporting documents that you are **REQUIRED** to upload in PeopleSoft for this contract.

Dept. Contract Admin : Ian Fernando

ServiceNow Contract # : OCACON0001805 v0.01

PeopleSoft Contract ID : 1000018347

Contract Amendment Number: First

Contract NTE : 40000

Contract Start Date : 2020-01-01

Contract End Date : 2022-12-31

#	Document List
1	Original Agreement and all Executed Amendments (unless previously uploaded)
2	Redlined Copy of Original Agreement (Unless previously uploaded)
3	All approved OCA waiver(s) to date
4	Evidence that FSHP Form sent to OEWD (Required for each Amendment)
5	Chapter 19B Compliance

6	Completed Cybersecurity Risk Analysis Documentation:[Out of Scope Email]
7	General Liability [Contract Amount: \$1,000,000.00 Policy Amount: \$2,000,000.00]
8	GL Additional Insured Endorsement
9	Auto Liability [Contract Amount: \$1,000,000,000.00 Policy Amount: \$2,000,000.00]
10	Auto Additional Insured Endorsement RM Waiver
11	Workers Compensation [Contract Amount: \$10,000,000.00 Policy Amount: \$1,000,000.00]
12	Workers Compensation Waiver of Subrogation RM Waiver
13	Tech Errors and Omission [Contract Amount: \$2,000,000.00 Policy Amount: \$2,000,000.00]
14	Cybersecurity [Contract Amount: \$2,000,000.00 Policy Amount: \$2,000,000.00]

**City and County of San Francisco
Office of Contract Administration
Purchasing Division**

First Amendment

THIS AMENDMENT (this “Amendment”) is made as of October 1, 2022, in San Francisco, California, by and between **HLP, Inc.**, (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period and increase the contract amount; and

WHEREAS, the Agreement was procured through a waiver of solicitation approved on August 12, 2022 for Regulation 21.30 Proprietary Software Licenses and Support and Proprietary Equipment Maintenance and this modification is consistent therewith; and

WHEREAS, approval for this Amendment was obtained under the Office of Contract Administration’s CSC continuing approval PSC number [insert PSC number] in the amount of \$200,000; and

NOW, THEREFORE, Contractor and the City agree as follows;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term “Agreement” shall mean the Agreement dated **January 1, 2020** between Contractor and City, as amended by the:

First amendment, dated **October 1, 2022.**

1b. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division (“CMD”). Wherever “Human Rights Commission” or “HRC” appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean “Contract Monitoring Division” or “CMD” respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Section 3 of the Agreement currently reads as follows:

3. Term of the Maintenance Agreement. Subject to Section 2, the term of this Maintenance Agreement shall be from 01/01/2020 to 12/31/2022.

Such section is hereby amended in its entirety to read as follows:

3. Term of the Maintenance Agreement. Subject to Section 2, the term of this Maintenance Agreement shall be from 01/01/2020 to 12/31/2027.

2b. Section 4 of the Agreement currently reads as follows:

4. City's Payment Obligation. The City will make a good faith attempt to pay all invoices within 30 days of billing. However, in no event shall City be liable for interest or late charges for any late payments made after such 30 day period. Contractor and the City understand and intend that the obligations of the City to pay maintenance charges hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City. The City shall pay maintenance charges, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Maintenance Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City. In no event shall the amount of this Agreement exceed **\$40,000 [Forty thousand dollars and no cents]**. The breakdown of costs associated with this Agreement appears in the Appendix B.

Such section is hereby amended in its entirety to read as follows:

4. City's Payment Obligation. The City will make a good faith attempt to pay all invoices within 30 days of billing. However, in no event shall City be liable for interest or late charges for any late payments made after such 30 day period. Contractor and the City understand and intend that the obligations of the City to pay maintenance charges hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City. The City shall pay maintenance charges, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Maintenance Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City. In no event shall the amount of this Agreement exceed **\$200,000 [Two Hundred Thousand Dollars and no cents]**. The breakdown of costs associated with this Agreement appears in the Appendix B-1.

2c. Appendix A. Appendix A is hereby replaced in its entirety by Appendix A-1, attached to this First Amendment and fully incorporated within the Agreement. All references to Appendix A in the Agreement shall refer to Appendix A-1.

2d. Appendix B. Appendix B is hereby replaced in its entirety by Appendix B-1, attached to this First Amendment and fully incorporated within the Agreement. All references to Appendix B in the Agreement shall refer to Appendix B-1.

2e. Limitations on Contributions. Section 28 is hereby replaced in its entirety as follows:

28. Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

2f. Withholding. Section 8.d is hereby added to "Taxes" to read as follows:

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

2g. Insurance. Section 16 is hereby replaced in its entirety to read as follows:

16. Insurance.

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

(a) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form;

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

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

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in the Section entitled "Notices to the Parties."

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the

effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

f. Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

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

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after **October 1, 2022**.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

CONTRACTOR

Recommended by:

HLP, Inc.

Virginia Donohue
Executive Director
San Francisco Animal Care and Control

Keith Brakey
Chief Operating Officer
9888 W Belleview Avenue, Suite 110
address
Littleton, CO 80123

Approved as to Form:

City vendor number: 000001 [REDACTED]

David Chiu
City Attorney

By: _____
Alicia Cabrera
Deputy City Attorney

Approved:

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

Appendix A-1
SCOPE OF SERVICES

I. CMS SOFTWARE LICENSE AGREEMENT

This is a legal and binding agreement between the City and County of San Francisco (“Purchaser”) and HLP, INC. (“HLP”). The request of the Purchaser for the Chameleon / CMS Software Package (“CMS”) and License, and the acceptance of payment for such by HLP, is an acceptance of these terms and conditions.

A. Grant of License and Use

HLP shall grant Purchaser this License for use of CMS at the time of payment. HLP grants no software licenses whatsoever, either explicitly or implicitly, except by full payment for the CMS Software. This license entitles the Purchaser the right to install CMS on a single Server unit to be used by any number of Client Workstations. Additional Servers require additional Licenses, except as stated under Terms and Restrictions. This License Agreement is with the designated Purchaser only. This Purchaser may not rent, lease, give, sell or in any way transmit any part of the CMS Software Package to an unauthorized, unlicensed entity. This is a non-exclusive, non-transferable license to the use of CMS.

B. Ownership

1. Title to CMS shall remain with HLP. The CMS product name, software, documentation, and other material parts of the CMS package are owned by HLP and may not be reproduced in any form, except as stated under Terms and Restrictions. CMS Software contains the proprietary technology of HLP, INC.
2. All modifications, additions, upgrades, and new versions provided for under Support and Maintenance are considered part of this title and subject to the conditions of this License.
3. Purchaser hereby acknowledges HLP's copyright of CMS regardless of whether the copyright notice appears on CMS or whether it has been filed with the United States Copyright Office.

C. Terms and Restrictions

1. The Purchaser shall receive an executable copy of CMS Software. The Purchaser may load, copy, or transmit CMS, in whole or in part, only as is necessary for execution, backup, and hot standby.
2. Purchaser may modify or merge CMS solely for execution by itself. Any part of this Software included in such adaptations will continue to be subject to this License.
3. HLP shall bill the Purchaser a Support & Maintenance FEE periodically using the formula under “Payment”. This bill is due and payable within thirty days of receipt.

4. HLP reserves the right to revoke this License if the Support & Maintenance FEE becomes delinquent and is not remedied 30 days after notification in writing. The Purchaser shall then cease use of CMS.
5. Purchaser agrees not to reverse engineer, decompile, or disassemble CMS.

D. Maintenance. HLP agrees to provide the following maintenance services:

1. **NEW VERSIONS:** New Versions are major changes to the look or feel of CMS. All new versions are included and guaranteed to all Purchasers.
2. **UPGRADES:** As requests for improvements are accumulated from more than one Purchaser, they will be incorporated into periodic upgrades. These upgrades are included and guaranteed to all Purchasers.
3. **DIAGNOSIS:** Technical personnel will diagnose the cause of system problems and refer the Purchaser to the appropriate avenue of correction. HLP shall correct the problem only if the cause is a bug in CMS.
4. **CORRECTIONS:** Corrections in CMS code will be available to all Purchasers through the technical support office. Corrections will be made as soon as possible after reported and prioritized as to urgency to CMS operations.

E. Support. HLP agrees to provide the following support services:

1. **TECHNICAL SUPPORT LINE:** This shall entitle the Purchaser faster access to a technical support person for questions of high priority. Calls are answered during business days and hours and referred to the appropriate staff person. Requests may be faxed or left on the message service when lines are busy or after hours. Evenings, weekends, and holidays are available by pre-arrangement.
2. **SYSTEM to SYSTEM:** When requested, HLP can provide the Purchaser direct support via modem and communication software in real time.
3. **SYSTEM ON-LINE HELP:** CMS contains comprehensive, context-sensitive, and hyper-texted HELP files that are installed with the software and upgraded as needed.
4. **INTERNET WEB SITE:** An internet site is available 24 hours and 7 days to registered Users. Questions, suggestions, and comments may be posted to other Users or the HLP staff. Data can be uploaded and down loaded, all through a local access call.
5. **PERSONNEL ON-SITE:** If, for any reason, HLP cannot resolve the Purchaser's request by the means of support listed above, and HLP deems the request critical, then HLP staff may visit the Purchaser's site to resolve the problem.

F. Source Code Escrow

1. This License does not include or cover access in any way to the CMS Source Code.
2. HLP has placed in escrow all current Source Code for CMS with an authorized escrow Agent.
3. The Purchaser shall be entitled to claim a copy of the CMS Source Code under the terms and conditions set forth in the Chameleon/CMS Source Code Escrow Agreement.

G. Limited Warranty

1. HLP is the owner of CMS and has the right to grant the Purchaser this license to use the same without violating any rights of any third party, and there is currently no actual or threatened suit by any such third party based on the alleged violation of such right by HLP.
2. HLP warrants that CMS will perform substantially in accordance with its intended use.
3. If CMS does not perform as represented and cannot be remedied within a reasonable time, HLP will refund the initial cost of this License only.
4. HLP does not warrant performance of CMS if it is modified by persons other than the staff of HLP.
5. HLP does not warrant that the execution of CMS will be uninterrupted or error free.
6. HLP does not warrant that other software programs or computer hardware will not interfere with its execution.
7. HLP disclaims all other warranties, either expressed or implied.

H. Liability

Under this agreement, HLP's liability for damages to the Purchaser resulting from the use of CMS shall not exceed the amount of the Purchaser's initial License. Under this agreement, HLP shall not be liable for any damages resulting from loss of data or use, lost profits or revenue, or any incidental or consequential damages.

I. Termination

HLP may terminate any License granted if Purchaser fails to observe this agreement, and such condition is not remedied within thirty days after written notice has been given Purchaser. Purchaser will then destroy all copies and adaptations of all versions of CMS and certify in writing that such has been done.

II. PUBLIC ACCESS SOFTWARE LICENSE AGREEMENT

This is a legal and binding agreement between the City and County of San Francisco (“Purchaser”) and HLP, INC.(“HLP”). The request of the Purchaser for the Chameleon / PUBLIC ACCESS Software Package (“PUBLIC ACCESS”) and License, and the acceptance of payment for such by HLP, is an acceptance of these terms and conditions. The PUBLIC ACCESS package is composed of ChamCam, Knowledge Rocket, Image Engine, WebChameleon, PaWWW, PetLink, the integrated hardware, and their media products.

A. Grant of License and Use

HLP shall grant Purchaser this License for use of PUBLIC ACCESS at the time of payment. HLP grants no software licenses whatsoever, either explicitly or implicitly, except by full payment for the PUBLIC ACCESS Software. This license entitles the Purchaser the right to install PUBLIC ACCESS on a single Server unit to be used by any number of Client Workstations. Additional Clients require additional Licenses, except as stated under Terms and Restrictions. This License Agreement is with the designated Purchaser only. This Purchaser may not rent, lease, give, sell or in any way transmit any part of the PUBLIC ACCESS Software Package, or media products of this software, to an unauthorized, unlicensed entity. This is a limited, non-exclusive, non-transferable license to the use of PUBLIC ACCESS.

B. Ownership

1. Title to PUBLIC ACCESS, and the media products from it, shall remain with HLP. The PUBLIC ACCESS product name, software, documentation, media products, and other material parts of the PUBLIC ACCESS package are owned by HLP and may not be reproduced in any form, except as stated under Terms and Restrictions. PUBLIC ACCESS Software, and its media products, contains the proprietary technology of HLP, INC.
2. All modifications, additions, upgrades, and new versions provided for under Support and Maintenance are considered part of this title and subject to the conditions of this License.
3. Purchaser hereby acknowledges HLP's copyright of PUBLIC ACCESS regardless of whether the copyright notice appears on PUBLIC ACCESS or whether it has been filed with the United States Copyright Office.

C. Terms and Restrictions

1. The Purchaser shall receive a executable copy of PUBLIC ACCESS Software and integrated hardware. The Purchaser may load, copy, or transmit PUBLIC ACCESS, or its media products, in whole or in part, only as is necessary for execution, backup, and hot standby.
2. Purchaser may modify or merge PUBLIC ACCESS solely for execution by itself. Any part of this Software included in such adaptations will continue to be subject to this License.
3. Purchaser agrees to maintain necessary internet links to allow for a consolidated search of shelter data.

4. HLP agrees to maintain a neutral, commercial free internet site for the sole purpose of achieving a consolidated search. All 'hits' are immediately linked to the local Shelter home page.
5. Images and data extracts created by PUBLIC ACCESS are intended for use by the Purchaser only. Transfer or sale of PUBLIC ACCESS images by the PURCHASER to other non-licenses entities for commercial purposes is forbidden.
6. HLP shall bill the Purchaser a Support & Maintenance FEE periodically using the formula under "Payment". This bill is due and payable within thirty days of receipt.
7. HLP reserves the right to revoke this License if the Support & Maintenance FEE becomes delinquent and is not remedied 30 days after notification in writing. The Purchaser shall then cease use of PUBLIC ACCESS.
8. Purchaser agrees not to reverse engineer, decompile, or disassemble PUBLIC ACCESS.
9. Purchaser agrees to protect HLP proprietary information. Information, including, but not limited to, all database schema, procedures, techniques, sounds, and images, may only be used by authorized, licensed entity.

D. Maintenance. HLP agrees to provide the following maintenance services:

1. **NEW VERSIONS:** New Versions are major changes to the look or feel of PUBLIC ACCESS. All new versions are included and guaranteed to all Purchasers.
2. **UPGRADES:** As requests for improvements are accumulated from more than one Purchaser, they will be incorporated into periodic upgrades. These upgrades are included and guaranteed to all Purchasers.
3. **DIAGNOSIS:** Technical personnel will diagnose the cause of system problems and refer the Purchaser to the appropriate avenue of correction. HLP shall correct the problem only if the cause is a bug in PUBLIC ACCESS.
4. **CORRECTIONS:** Corrections in PUBLIC ACCESS code will be available to all Purchasers through the technical support office. Corrections will be made as soon as possible after reported and prioritized as to urgency to PUBLIC ACCESS operations.

E. Support. HLP agrees to provide the following support services:

1. **TECHNICAL SUPPORT LINE:** This shall entitle the Purchaser faster access to a technical support person for questions of high priority. Calls are answered during business days and hours and referred to the appropriate staff person. Requests may be faxed or left on the message service when lines are busy or

after hours. Evenings, weekends, and holidays are available by pre-arrangement.

2. SYSTEM to SYSTEM: When requested, HLP can provide the Purchaser direct support via modem and communication software in real time.
3. INTERNET WEB SITE: An internet site is available 24 hours and 7 days per week to registered Users. Questions, suggestions, and comments may be posted to other Users or the HLP staff. Data can be uploaded and down loaded, all through a local access call.
4. PERSONNEL ON-SITE: If, for any reason, HLP cannot resolve the Purchaser's request by the means of support listed above, and HLP deems the request critical, then HLP staff may visit the Purchaser's site to resolve the problem.

F. Limited Warranty

1. HLP is the owner of PUBLIC ACCESS and has the right to grant the Purchaser this license to use the same without violating any rights of any third party, and there is currently no actual or threatened suit by any such third party based on the alleged violation of such right by HLP.
2. HLP warrants that PUBLIC ACCESS will perform substantially in accordance with it's intended use.
3. If PUBLIC ACCESS does not perform as represented and cannot be remedied within a reasonable time, HLP will refund the initial cost of this License only.
4. HLP does not warrant performance of PUBLIC ACCESS if it is modified by persons other than the staff of HLP.
5. HLP does not warrant that the execution of PUBLIC ACCESS will be uninterrupted or error free.
6. HLP does not warrant that other software programs or computer hardware will not interfere with it's execution.
7. HLP disclaims all other warranties, either expressed or implied.

G. Liability

Under this agreement, HLP's liability for damages to the Purchaser resulting from the use of PUBLIC ACCESS shall not exceed the amount of the Purchaser's initial License. Under this agreement, HLP shall not be liable for any damages resulting from loss of data or use, lost profits or revenue, or any incidental or consequential damages.

H. Termination

HLP may terminate any License granted if Purchaser fails to observe this agreement, and such condition is not remedied within thirty days after written notice has been given Purchaser.

Purchaser will then destroy all copies and adaptations of all versions of PUBLIC ACCESS and certify in writing that such has been done.

III. WEB LICENSING PROCESSING SERVICES

HLP will accommodate online license purchases and renewals through HLP's LicensePet.com, offering increased convenience to the public by allowing them to pay for their animal licenses online with a credit card. Setup services to analyze/code rules for a variety of criteria are included at no additional cost.

- A. Animal license renewal information is transmitted (encrypted) via HLP's KnowledgeRocket application from the Client's Chameleon server.
- B. HLP will transmit (encrypted) licensing data back to the Client's Chameleon database on a daily basis, ensuring staff always has access to current licensing information.
- C. Licensing data will be updated via HLP's LockBox Plus program. Old licenses will be renewed; new licenses and receipts will be created. New licenses will be processed via HLP's LockBox Plus program using Scrubber Technology.
- D. HLP will provide daily transaction summaries to the Client detailing the work completed.
- E. HLP will provide a report listing all transactions that require a new license tag for the use of the Client to send the license tags to their customers.

IV. WEB DONATION SERVICES (included with WebLicensing upon client request)

HLP will accommodate online donations allowing the public to include a donation with the WebLicensing transaction or submit a new or additional donation at any time.

- A. Person records will be processed via HLP's LockBox Plus program using Scrubber Technology, which matches the Donation records with existing person records in the database.
- B. Receipt (if requested), Donation, and Donor Profile records will be created.

V. INITIAL SET UP SERVICES

- A. Determine descriptive information to be displayed for person, animal identification.
- B. Determine rules if new licenses are to be sold (or just renewals).
- C. Analyze/code license types by jurisdiction (altered, unaltered, dogs/cats, seniors, etc).
- D. Analyze/code rules for documentation, exception handling (vaccination certificates, sterilization certificates, etc).
- E. Modifications of HLP's LockBox Plus program to incorporate above rules.

- F. NOTE: the LockBox Plus program will be delivered approximately one week after the "go live" date.

VI. VET IMPORT – AUTOMATED LICENSE AND VACCINATION DATA INTEGRATION SERVICES

- A. HLP will receive data files submitted from eligible local veterinarians and/or 3rd parties on a monthly basis. HLP will provide documentation detailing method of transfer, format, and contents of data files for Client to deliver to participating veterinarians and/or 3rd parties. HLP staff is available to assist with technical questions from veterinarian and/or 3rd party staff.
- B. HLP will provide secure logins for an HLP maintained website for uploading data files.
- C. HLP will create Chameleon compatible records from data files submitted.
- D. HLP will transmit processed license and vaccination records and insert them into the Client's Chameleon database as they become available.
- E. HLP will provide daily transaction summaries to the Client detailing the day's work.

VII. IMAGE ENTRY - LICENSE AND VACCINATION FORMS DATA ENTRY SERVICES

- A. HLP will receive and process vaccination and/or license documentation submitted by the Client from local veterinarians and/or 3rd parties.
- B. Client will electronically image the documents and use HLP provided software to transmit and receive record images and data.
- C. HLP will provide data entry on scanned images of license and vaccination documentation and create Chameleon compatible records.
- D. HLP will transmit processed license and vaccination records and insert them into the Clients Chameleon database as they become available. If requested, all imaged vaccination certificates will also be uploaded and attached to the animal record as a Memo.
- E. HLP will provide daily transaction summaries to the Client detailing the day's work.

VIII. NOTES AND EXCLUSIONS

- A. To qualify to utilize Vet Import a veterinarian and/or 3rd party must average 200 records submitted each month. If a veterinarian and/or 3rd party does not initially or no longer meets this requirement paper forms must be submitted to Client, which are then able to be processed via Image Entry.
- B. If HLP will be receiving imaged license and vaccination documentation electronically from the Client for data entry services, standards for criteria including file format, resolution, file size, and electronic delivery method must be agreed upon prior to beginning regular submissions.

- C. HLP will not be responsible for reconciling payments attached to bulk license submissions by local veterinarians or 3rd parties. All payments for licenses sold by veterinarians and/or 3rd parties must be submitted to Client directly.
- D. All HLP products listed are copyrighted under the Chameleon Public Access Software License and/or the Chameleon Software License and the Client use of all HLP products is subject to all terms and conditions of those licenses.
- E. Set-up is limited to the items specified above. Any other customization will be bid separately.
- F. Client will ensure that the LicenseNo, PersonId, and AnimalId are on the license renewal notice.
- G. Client is responsible for handling inquiries from the public.
- H. Client agrees to provide a link on their website to the WebLicensing service.
- I. For the purposes of licensing online, Client will provide a bank account that uses the Authorize.net, CyberSource Secure Acceptance, Elavon Converge, FIS PayDirect, or Official Payments Co-Brand payment processor. Other payment processors may be acceptable, but will be evaluated on a case by case basis and subject to additional charges. Client remains responsible for any transaction fees that may be assessed by bank account provided.
- J. Monies obtained online will be directly deposited into the Client designated bank account by the owner's bank at settlement from the payment processor. Once HLP has obtained an authorization code from the payment processor, the transaction will be assumed to be complete.
- K. Client will be responsible for reconciling their bank statement with WebLicensing transactions. HLP will not keep credit card information. HLP will update Chameleon with the transaction_id and authorization code from the payment processor. The Crystal Close of Business report and other provided Crystal reports can be used to facilitate this task.
- L. Services will terminate if annual fee or transaction fees are not paid and client will be required to cease use of all HLP products associated with WebLicensing services.
- M. All HLP products listed are copyrighted under the Chameleon Public Access Software License and/or the Chameleon/CMS Software License and the Client use of all HLP products is subject to all terms and conditions of those licenses.
- N. All purchase orders or contracts must reference this quote or the above description must be included.

IX. CONTACT INFORMATION

Telephone Number: 800-459-8376
Facsimile Number: 866-844-3924
E-Mail Address: sales@chameleonbeach.com
Website URL: www.chameleonbeach.com

Appendix B-1

CALCULATION OF CHARGES

I. PAYMENT

- A. Payment for CMS and PUBLIC ACCESS is defined as two parts:
 - 1. Cost of initial License
 - 2. Support and Maintenance
- B. The “Cost of initial License” is currently fixed at a published price and is a one-time fee.
- C. The “Support and Maintenance” cost is figured by the size of the Purchaser’s network, and this fee is billed monthly, quarterly, or annually. The formula is a fixed amount for the Server plus a fixed amount for each client workstation that uses CMS for daily operations. The amount changes as the numbers of workstations change unless the Purchaser is paying for “unlimited” users. Annual increases in this fixed, published amount are limited to the “cost of living index”.
- D. All of the above payment conditions must be met within 30 days of Invoice date in order for the Purchaser to hold a current, valid CMS and PUBLIC ACCESS License.

II. FEES & ASSOCIATED COSTS

A. SF Animal Care & Control, 5 Year Support & Maintenance

Description	Qty	Rate	Total
Chameleon/CMS Software Annual Support & Maintenance *limited to 1 server and 8 workstations; 3 years@\$960 a year	9	\$ 2,880.00	\$ 25,920.00
Chameleon/CMS Software Annual Support & Maintenance *limited to 1 server and 8 workstations; additional 2 years@ \$1920	9	\$ 1,920.00	\$ 17,280.00
		Subtotal	\$ 43,200.00
		Sales Tax (8.625%)	\$ 3,726.00
		Total	\$ 46,926.00

B. SF Treasure & Tax Collector, 5 Year Support & Maintenance

Description	Qty	Rate	Total
-------------	-----	------	-------

Chameleon/CMS Software Annual Support & Maintenance *Limited to 1 server and 1 workstation, 1 year	10	\$ 960.00	\$ 9,600.00
Subtotal			\$ 9,600.00
Sales Tax (8.625%)			\$ 828.00
Total			\$ 10,428.00

C. SF Animal Care & Control, 5 Year Web Licensing

Description	Qty	Rate	Total
Required annual WebLicensing/WebDonation service fee. 3 years @\$3840	1	\$ 11,520.00	\$ 11,520.00
Required annual WebLicensing/WebDonation service fee. Additional 2 years @\$3840	1	\$ 7,680.00	\$ 7,680.00
Estimated WebLicensing Transaction, per transaction	50,000	\$ 0.35	\$ 17,500.00
<i>Reference: Estimate#5884 dated 4/01/22</i>			
Subtotal			\$ 36,700.00
Total			\$ 36,700.00

D. SF Animal Care & Control, 5 Year Vet Import and Image Entry Licenses

Description	Qty	Rate	Total
Initial Setup Fee for VetImport/ImageEntry Year 1	1	\$ 5,000.00	\$ 5,000.00
Annual Service Fee for VetImport/ImageEntry Year 1	1	\$ 1,920.00	\$ 1,920.00
Annual Service Fee for VetImport/ImageEntry Year 2	1	\$ 1,920.00	\$ 1,920.00
Estimated Transaction fees per transaction	4200	\$ 0.79	\$ 3,318.00
Annual Service Fee for VetImport/ImageEntry Year 3	1	\$ 1,920.00	\$ 1,920.00
Estimated Transaction fees per transaction	4200	\$ 0.79	\$ 3,318.00
Annual Service Fee for VetImport/ImageEntry Year 4	1	\$ 1,920.00	\$ 1,920.00
Estimated Transaction fees per transaction	4200	\$ 0.79	\$ 3,318.00
Annual Service Fee for VetImport/ImageEntry Year 5	1	\$ 1,920.00	\$ 1,920.00
Estimated Transaction fees per transaction	4200	\$ 0.79	\$ 3,318.00
Subtotal			\$ 27,872.00

Total	\$ 27,872.00
-------	--------------

E. SF Treasure & Tax Collector and Animal Care & Control, 6 Months of Services

Description	Qty	Rate	Total
SF Animal Care & Control Chameleon/CMS Software Annual Support & Maintenance *limited to 1 server and 8 workstations; 6 months	9	\$ 480.00	\$ 4,320.00
SF Treasure Tax & Collector Chameleon/CMS Software Annual Support & Maintenance *Limited to 1 server and 1 workstation, 6 months	2	\$ 480.00	\$ 960.00
Required annual WebLicensing/WebDonation service fee. 6 months @\$3840	1	\$ 1,920.00	\$ 1,920.00
Annual Service Fee for VetImport/ImageEntry 6 Months	1	\$ 960.00	\$ 960.00
Estimated WebLicensing transaction fees per transaction	5000	\$ 0.35	\$ 1,750.00
Estimated VetImport/ImageEntry Transaction fees per transaction	2100	\$ 0.79	\$ 1,659.00
		Subtotal	\$ 11,569.00
		Sales Tax (8.625%)	\$ 455.40
		Total	\$ 12,024.40

**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**

**Software Licensing and Maintenance and Support
Agreement between the City and County of San Francisco and**

HLP, Inc.

This This agreement (the "Agreement") is made this Twentieth day of April, 2020, in the City and County of San Francisco, State of California, by and between: **HLP, Inc.**, 9888 W Belleview Avenue, Suite 110, Littleton, CO 80123, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the Department of Animal Care & Control wishes to license certain software, the Chameleon / CMS Software Package ("CMS") and Public Access Software from Contractor; and,

WHEREAS, Contractor represents and warrants that it is qualified to provide such software and services required by City as set forth under this Agreement; and

WHEREAS, Contractor will provide support and maintenance services for software licensed under this agreement; and

Now, THEREFORE, the parties agree as follows:

1. Definitions. Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Attachment, it shall have the meaning herein set forth.

Acceptance Notice from the City to Contractor that the Licensed Software meets the specifications contained in the Documentation. City's Acceptance of the Licensed Software shall be governed by the procedures set forth in this agreement.

Agreement	This document and any attached appendices and exhibits, including any future written and executed amendments.
Documentation	The technical publications relating to the use of the Licensed Software, such as reference, installation, administrative and programmer manuals, provided by Contractor to City.
Licensed software	The Chameleon / CMS Software Package ("CMS") and the Public Access License, all related materials, Documentation, all corrections, patches or updates thereto, and other written information received by City from Contractor, whether in machine-readable or printed form.
Effective Date	Date upon which the Controller has certified to the availability of funds and the Contractor has been notified in writing or the Software is received and installed at the customer site, whichever is later.
Errors, Defects and Malfunctions	Either a deviation between the function of the Software and the documentation furnished by Contractor for the Software, or a failure of the Software which degrades the use of the Software.
Fix	Repair or replacement of source, object or executable code in the Software to remedy an Error, Defect or Malfunction.
Maintenance Agreement	This Agreement and the incorporated Appendices which together specify the terms and conditions for the correction of software Errors, Defects and Malfunctions in the Software, for the provision of Upgrades to the Software, and for the provision of Support Services to end users of the Software.
Patch	Temporary repair or replacement of code in the Software to remedy an Error, Defect or Malfunction. Patches may be made permanent and released in Subsequent Releases of the Software.
Priority Category	A priority assigned to an Error, Defect or Malfunction, designating the urgency of correcting an Error, Defect or Malfunction. Assignment of a Priority Category to an Error, Defect or Malfunction is based on City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.
Priority Protocol	Based on the Priority Category, rules specifying the turnaround time for correcting Errors, Malfunctions and Defects; escalation procedures, and personnel assignment.

Software	Licensed programs and associated documentation licensed to City by HLP, Inc. , as listed in Exhibit A and any modification or Upgrades or modifications to the program(s) provided under this Maintenance Agreement.
Source code	The human readable compliable form of the Licensed Software to be provided by Contractor.
Specifications	The functional and operational characteristics of the Licensed Software as described in Contractor's current published product descriptions and technical manuals
Subsequent Release	A release of the Software for use in a particular operating environment which supersedes the Software. A Subsequent Release is offered and expressly designated by Contractor as a replacement to a specified Software product. A Subsequent Release will be supported by Contractor in accordance with the terms of this Software Maintenance Attachment. Multiple Subsequent Releases may be supported by Contractor at any given time.
Support Services	The Software support service required under this Maintenance Agreement. Support Services include correcting an Error, Defect or Malfunction; providing telephone and/or online support concerning the installation and use of the Software; training in the installation and use of the Software; on-site consulting and application development services; detection, warning and correction of viruses; and disabled/disabling code.
Upgrade	Either an enhancement to the Software code to add new features or functions to the system or software programming revisions containing corrections to Errors, Defects and Malfunctions that have been reported by users or discovered by the Contractor.
Warranty Period	A period commencing with the installation of the Software product during which reported Errors, Defects and Malfunctions for Software products are corrected without charge in accordance with the provisions below.
Workaround	A change in the procedures followed or end user operation of the software to avoid an Error, Defect or Malfunction without significantly impairing functionality or degrading the use of the Software.

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the San Francisco Animal Care and Control. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the San Francisco Animal Care and Control unless otherwise indicated by the context.

2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Maintenance Agreement is subject to the budget and fiscal

provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the City's Controller, and any amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Maintenance Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year in the event funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Maintenance Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

THIS SECTION SHALL CONTROL AGAINST ANY AND ALL OTHER PROVISIONS OF THIS MAINTENANCE AGREEMENT.

3. Term of the Maintenance Agreement. Subject to Section 2, the term of this Maintenance Agreement shall be from 01/01/2020 to 12/31/2022.

4. City's Payment Obligation. The City will make a good faith attempt to pay all invoices within 30 days of billing. However, in no event shall City be liable for interest or late charges for any late payments made after such 30 day period. Contractor and the City understand and intend that the obligations of the City to pay maintenance charges hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City. The City shall pay maintenance charges, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Maintenance Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City. In no event shall the amount of this Agreement exceed **\$40,000 [Forty thousand dollars and no cents]**. The breakdown of costs associated with this Agreement appears in the Appendix B.

5. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the Maintenance Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the Maintenance Agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller. The City is not required to honor any offered or promised additional funding for a contract which

exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

6. Payment; Invoice Format. Invoices furnished by Contractor under this Maintenance Agreement must be in a form acceptable to the Controller. Each invoice must contain a unique identifying number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties." City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Maintenance Agreement.

- a. Getting paid by the City for goods and/or services. All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.
- b. The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

7. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

8. Taxes. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon this Maintenance Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor. If this Maintenance Agreement entitles Contractor to the possession, occupancy or use of City real property for private gain, then the following provisions apply:

- a. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that this Maintenance Agreement may create a possessory interest subject to property taxation and Contractor, and any permitted successor or assign, may be subject to the payment of such taxes.

b. Contractor, on behalf or itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or other extension of this Maintenance Agreement may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Contractor shall report any assignment or other transfer of any interest in this Maintenance Agreement or any renewal or extension thereof to the County Assessor within sixty days after such assignment, transfer, renewal or extension.

c. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements under applicable law with respect to possessory interests.

5. License

a. Grant of License. Subject to the terms and conditions of this Agreement, Contractor grants City a non-exclusive and non-transferable limited term license to use the Licensed Software. City acknowledges and agrees that the Licensed Software is the proprietary information of Contractor and that this Agreement grants City no title or right of ownership in the Licensed Software.

For the purpose of any bona fide City disaster recovery plan or with respect to the use of computer software in its municipal operations, City may make one copy of the Licensed Software for archival purposes and use such archival copy on a CPU other than the Designated CPU, or at a site other than the Designated Site, so long as such alternative CPU or site is owned or controlled by City. The use of such archival copy shall be limited to (1) the purpose of conducting limited testing of the disaster recovery plan's procedures and effectiveness and (2) during any period subsequent to the occurrence of an actual disaster during which the City cannot operate the Licensed Software on the Designated CPU or at the Designated Site. City agrees to furnish evidence of its disaster recovery plan and procedures upon Contractor's request.

d. Transfer of Products. City may move the Licensed Software and supporting materials to another City site which physically replaces the original installation site upon prior written notice to Contractor in accordance with the specifications set forth in Appendix A.

e. Documentation. Contractor shall provide City with the Licensed Software specified in the Authorization Document, and a minimum of two copies of the Documentation per installation. Contractor grants to City permission to duplicate all printed Documentation for City's internal use.

f. Proprietary Markings. City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Licensed Software or any related materials or Documentation.

7. Acceptance Testing. After Contractor has installed the Licensed Software, the City shall have a period of 30 days ("Acceptance Testing Period") from the date of installation to verify that the Licensed software substantially performs to the specifications contained in the Documentation. In the event that the City determines that the Licensed Software does not meet such specifications, the City shall notify the Contractor in writing, and Contractor shall modify or correct the Licensed Software so that it satisfies the Acceptance criteria. The date of Acceptance will be that date upon which City provides Contractor with written notice of satisfactory completion of Acceptance testing. If City notifies Contractor after the Acceptance

Testing Period that the Licensed Software does not meet the Acceptance criteria of this section, then City shall be entitled to terminate this License in accordance with the procedures specified in Section 30(b) herein, and shall be entitled to a full refund of the license fee.

11. Warranties: Right to Grant License. Contractor hereby warrants that it has title to and/or the authority to grant a license of the Licensed Software to the City.

12. Warranties: Conformity to Specifications. Contractor warrants that when the Licensed Software specified in the Authorization Document and all updates and improvements to the Licensed Software are delivered to City, they will be free from defects as to design, material, and workmanship and will perform on the Designated CPU in accordance with the Contractor's published specifications for the Licensed Software.

13. Infringement Indemnification. If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the Licensed Software infringes a patent, copyright, or any right of a third party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold City harmless and defend such action at its own expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the Licensed Software constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement.

In the event a final injunction is obtained against City's use of the Licensed Software by reason of Infringement, or in Contractor's opinion City's use of the Licensed Software is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the Licensed Software as contemplated hereunder, (b) replace the Licensed Software with a non-infringing, functionally equivalent substitute Licensed Software, or (c) suitably modify the Licensed Software to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Licensed Software. If none of these options is reasonably available to Contractor, then the applicable Authorization Document or relevant part of such Authorization Document may be terminated at the option of either party hereto and Contractor shall refund to City all amounts paid under this Agreement for the license of such infringing Licensed Software. Any unauthorized modification or attempted modification of the Licensed Software by City or any failure by City to implement any improvements or updates to the Licensed Software, as supplied by Contractor, shall void this indemnity unless City has obtained prior written authorization from Contractor permitting such modification, attempted modification or failure to implement. Contractor shall have no liability for any claim of Infringement based on City's use or combination of the Licensed Software with products or data of the type for which the Licensed Software was neither designed nor intended to be used.

9. Scope of Service Coverage

a. Contractor shall provide Support Services and provide Upgrades during the term of this Maintenance Agreement for the Software.

b. During the term of this Maintenance Agreement, Contractor will furnish Error, Defect or Malfunction correction in accordance with the Priority Categories listed below, based on the City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.

- 1) Priority 1: An Error, Defect or Malfunction which renders the Software inoperative; or causes the Software to fail catastrophically.
- 2) Priority 2: An Error, Defect or Malfunction which substantially degrades the performance of the Software, but does not prohibit the City's use of the Software.
- 3) Priority 3: An Error, Defect or Malfunction which causes only a minor impact on the use of the Software.

c. Contractor will furnish Error, Defect or Malfunction correction in accordance with the following protocols:

- 1) Priority 1 Protocol: Within two business hours, Contractor assigns a product technical specialist(s) to diagnose and correct the Error, Defect or Malfunction; thereafter, Contractor shall provide ongoing communication about the status of the correction; shall proceed to immediately provide a Fix, a Patch or a Workaround; and exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Subsequent Release. Contractor will escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error, Defect or Malfunction is corrected.
- 2) Priority 2 Protocol: Within four business hours, Contractor assigns a product technical specialist(s) to diagnose the Error, Defect or Malfunction and to commence correction of the Error, Defect or Malfunction; to immediately provide a Workaround; to provide escalation procedures as reasonably determined by Contractor's staff; and to exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Software maintenance release.
- 3) Priority 3 Protocol: Contractor may include a Fix or Patch in the next Software major release.

10. Hotline Support. Contractor shall provide remote access hotline support to City to help City answer routine questions with respect to the use of the Software. Contractor also shall provide remote access hotline support to City to initiate resolution of Priority 1 and Priority 2 Errors, Defects and Malfunctions. Hotline support shall be made available by phone between the hours of 8 a.m. and 5 p.m. Pacific time Monday through Friday, except legal holidays. Hotline support shall be available by electronic bulletin board, electronic mail or other service 24-hours a day, seven-days a week.

11. City Responsibilities Related to Support. City shall use reasonable efforts to make available to Contractor reasonable access to the equipment on which City experienced the Error, Defect or Malfunction, the Software Product and all relevant documentation and records. City shall also provide reasonable assistance to Contractor, including sample output and diagnostic information, in order to assist Contractor in providing Support Services. City shall be responsible for the interface between the Software and other software products installed on City equipment. Unless otherwise agreed in writing between City and Contractor, City is responsible for installing, managing and operating any Software delivered under this Maintenance Agreement.

12. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of the Contractor to replace unsatisfactory work, equipment, or materials although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that did not conform to the requirements of this Maintenance Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

13. Qualified Personnel. Work under this Maintenance Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall assign adequate personnel resources to provide the level of service within the response times specified in this Maintenance Agreement.

14. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

15. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Maintenance Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Maintenance Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Maintenance Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Maintenance Agreement.

b. **Payment of 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 Maintenance 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 Maintenance Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Maintenance Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Maintenance Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

16. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

4) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

b. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

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

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense

costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

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

g. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

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

i. (Reserved)

j. Technology Errors and Omissions Liability coverage, with limits of \$2,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

- 1) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and
- 2) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

k. Contractor shall maintain in force during the full life of the agreement Cyber and Privacy Insurance with limits of not less than \$2,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

l. Coverage for Technology Errors and Omissions Liability and Cyber Privacy may be in a single policy with a shared limit.

17. Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Maintenance Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Maintenance

Agreement and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its sublicensors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorney's fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Maintenance Agreement.

18. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS MAINTENANCE AGREEMENT SHALL BE LIMITED TO THE PAYMENT OBLIGATION PROVIDED FOR IN SECTION 4 OF THIS MAINTENANCE AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS MAINTENANCE 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 MAINTENANCE AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS MAINTENANCE AGREEMENT.

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

20. Support Service Term and Termination for Convenience

a. **Commencement.** Support Services for the Software begin on the Effective Date for the Software.

b. **Termination for Cause.** In the event Contractor fails to perform any of its obligations under this Maintenance Agreement, this Maintenance Agreement may be terminated and all of Contractor's rights hereunder ended. Termination will be effective after ten days written notice to Contractor. In the event of such termination, Contractor will be paid for those services performed under this Maintenance Agreement to the satisfaction of the City, up to the date of termination. However, City may offset from any such amounts due Contractor any costs City has or will incur due to Contractor's non-performance. Any such offset by City will not constitute waiver of any other remedies City may have against Contractor for financial injury or otherwise.

c. **Termination for Convenience.** City shall have the option, in its sole discretion, to terminate this Maintenance Agreement, at any time during the term thereof, for City's convenience and without cause by giving Contractor thirty days written notice of such

termination. In the event of such termination, Contractor will be paid for those services performed, pursuant to this Maintenance Agreement, to the satisfaction of the City up to the date of termination. In no event will City be liable for costs incurred by Contractor after receipt of notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on this Maintenance Agreement, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not authorized or reasonable under this section.

21. Rights and Duties Upon Termination or Expiration. This Section and the following Sections of the Maintenance Agreement shall survive termination or expiration of this Maintenance Agreement:

- | | |
|---|--|
| 7. Submitting False Claims; Monetary Penalties | 25. Audit and Inspection of Records. |
| 8. Taxes. | 26. Subcontracting. |
| 12. Payment Does Not Imply Acceptance of Work. | 27. Assignment. |
| 14. Responsibility for Equipment. | 34. Provisions Controlling. |
| 15. Independent Contractor; Payment of Taxes and Other Expenses | 35. Entire Agreement; Modifications |
| 16. Insurance | 37. Non-Waiver of Rights. |
| 17. Indemnification. | 38. Governing Law. |
| | 41. Protection of Private Information. |

Subject to the immediately preceding sentence, upon termination of this Maintenance Agreement prior to expiration of the term specified in Section 3, this Maintenance Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Maintenance Agreement, and any completed or partially completed work which, if the Maintenance Agreement had been completed, would have been required to be furnished to the City. This subsection shall survive termination of this Maintenance Agreement.

22. Conflict of Interest. Through its execution of this Maintenance Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Maintenance Agreement.

23. Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Maintenance Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used

only in performance of this Maintenance Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent software developer would use to protect its own proprietary data.

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

To City: Virginia Donohue
San Francisco Animal Care and Control
1200 15th Street, San Francisco CA 94103
Virginia.Donohue@sfgov.org

To Contractor: Keith Brakey
9888 W Belleview Avenue, Suite 110
Littleton, CO 80123
Keith@chameleonbeach.com

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

25. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Maintenance Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Maintenance Agreement, whether funded in whole or in part under this Maintenance 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 Maintenance 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 of this Maintenance Agreement shall have the same rights conferred upon City by this Section.

26. Subcontracting. Contractor is prohibited from subcontracting this Maintenance Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Maintenance Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

27. Assignment. The services to be performed by Contractor are personal in character and neither this Maintenance Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Maintenance Agreement.

28. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease

of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. . Contractor further agrees to provide to City the names of each person, entity or committee described above.

29. Drug-Free Workplace. Contractor acknowledges that pursuant to the Federal Drug Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by the Contractor, its employees, agents or assigns shall be deemed a material breach of contract.

30. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Maintenance Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Maintenance 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 Maintenance Agreement.

31. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, Contractors' bids, responses to RFPs and all other records of communications between City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

32. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Maintenance Agreement.

Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Maintenance Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Contractor's use of profit as a violation of this section.

33. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulation of the City and of all state, and federal laws in any manner affecting the performance of this Maintenance 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.

34. Provisions Controlling. Contractor agrees that in the event of conflicting language between this "Software Maintenance Attachment" and Contractor's printed form, the provisions of this "Software Maintenance Attachment" shall take precedence.

35. Entire Agreement; Modifications. The Maintenance Agreement, together with the Appendices and/or Exhibits hereto, constitutes the entire Maintenance Agreement between the parties and this Maintenance Agreement may not be modified, nor may any of its terms be waived, except by written instrument executed and approved in the same manner as this Maintenance Attachment. All agreements between the parties are included herein and no promises or statements have been made by either party unless endorsed hereon in writing. No change or waiver of any provisions hereof shall be valid unless made in writing with the consent of both parties and executed in the same manner as this Maintenance Agreement. Should the application of any provision of this Maintenance Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Maintenance Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable. Subject to the specific provisions of this Maintenance Agreement, this Maintenance Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

36. Force Majeure. Contractor shall not be liable for failure to maintain Software when such failures are due to causes beyond its reasonable control, such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities, and in such event Contractor shall perform as soon as such cause is removed.

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

38. Governing Law. This formation, interpretation and performance of this Maintenance Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Maintenance Agreement shall be in San Francisco.

39. Construction. All section headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Maintenance Agreement.

40. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Maintenance Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of this Maintenance Agreement.

41. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

42. Graffiti Removal. Reserved.

43. Food Service Waste Reduction Requirements. Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Maintenance Agreement as though fully set forth. This provision is a material term of this Maintenance Agreement. By entering into this Maintenance Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Maintenance Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

44. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

45. Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement. . If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

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

CITY

CONTRACTOR

Recommended by:

HLP, Inc.

DocuSigned by:
Virginia Donohue
4FF9D1A1B9F8499...

Virginia Donohue
Executive Director
San Francisco Animal Care and Control

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

Approved as to Form:

Dennis J. Herrera
City Attorney

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

By: DocuSigned by:
Margarita Gutierrez
3AA5640935284BE...

Margarita Gutierrez
Deputy City Attorney

Approved:

DocuSigned by:
Shawn Peeters
C13GDA270251449...

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

DocuSigned by:
Keith Brakey
A58B856F4782413...

Keith Brakey
Chief Operating Officer

City vendor number: 0000019

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges

Appendix A Services to be Provided by Contractor

CHAMELEON / CMS SOFTWARE

LICENSE AGREEMENT

This is a legal and binding agreement between the Purchaser and HLP, INC. ("HLP"). The request of the Purchaser for the Chameleon / CMS Software Package ("CMS") and License, and the acceptance of payment for such by HLP, is an acceptance of these terms and conditions.

I. GRANT OF LICENSE and USE :

HLP shall grant Purchaser this License for use of CMS at the time of payment. HLP grants no software licenses whatsoever, either explicitly or implicitly, except by full payment for the CMS Software. This license entitles the Purchaser the right to install CMS on a single Server unit to be used by any number of Client Workstations. Additional Servers require additional Licenses, except as stated under Terms and Restrictions. This License Agreement is with the designated Purchaser only. This Purchaser may not rent, lease, give, sell or in any way transmit any part of the CMS Software Package to an unauthorized, unlicensed entity. This is a non-exclusive, non-transferable license to the use of CMS.

II. PAYMENT :

- * Payment for CMS is defined as two parts: 1) Cost of initial License and 2) Support and Maintenance.
- * The "Cost of initial License" is currently fixed at a published price and is a one time fee.
- * The "Support and Maintenance" cost is figured by the size of the Purchaser's network, and this fee is billed monthly, quarterly, or annually. The formula is a fixed amount for the Server plus a fixed amount for **each** client workstation that uses CMS for daily operations. The amount changes as the numbers of workstations change unless the Purchaser is paying for "unlimited" users. Annual increases in this fixed, published amount are limited to the "cost of living index".
- * All of the above payment conditions must be met within 30 days of Invoice date in order for the Purchaser to hold a current, valid CMS License.

III. OWNERSHIP :

- * Title to CMS shall remain with HLP. The CMS product name, software, documentation, and other material parts of the CMS package are owned by HLP and may not be reproduced in any form, except as stated under Terms and Restrictions. CMS Software contains the proprietary technology of HLP, INC.
- * All modifications, additions, upgrades, and new versions provided for under Support and Maintenance are considered part of this title and subject to the conditions of this License.
- * Purchaser hereby acknowledges HLP's copyright of CMS regardless of whether the copyright notice appears on CMS or whether it has been filed with the United States Copyright Office.

IV. TERMS and RESTRICTIONS :

- * The Purchaser shall receive an executable copy of CMS Software. The Purchaser may load, copy, or transmit CMS, in whole or in part, only as is necessary for execution, backup, and hot standby.
- * Purchaser may modify or merge CMS solely for execution by itself. Any part of this Software included in such adaptations will continue to be subject to this License.
- * HLP shall bill the Purchaser a Support & Maintenance FEE periodically using the formula under "Payment". This bill is due and payable within thirty days of receipt.
- * HLP reserves the right to revoke this License if the Support & Maintenance FEE becomes delinquent and is not remedied 30 days after notification in writing. The Purchaser shall then cease use of CMS.
- * Purchaser agrees not to reverse engineer, decompile, or disassemble CMS.

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSIONDept. Code: AIRType of Request: Initial Modification of an existing PSC (PSC # 40697 - 14/15)Type of Approval: Expedited Regular Annual Continuing (Omit Posting)Type of Service: PMSS and DB Services for the Terminal 3 West Improvements ProjectFunding Source: Airport Capital FundsPSC Original Approved Amount: \$600,000,000PSC Original Approved Duration: 04/20/15 - 06/30/20 (5 years 10 weeks)PSC Mod#1 Amount: \$300,000,000PSC Mod#1 Duration: 07/01/20-02/01/23 (2 years 30 weeks)PSC Cumulative Amount Proposed: \$900,000,000PSC Cumulative Duration Proposed: 7 years 41 weeks**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

Project Management Support Services (PMSS) and Design-Build (DB) service teams with airport terminal design and management expertise are required to manage the design and construction of the Terminal 3 West Improvements project. Services to be provided include project controls, scheduling, document control, design management, contracts management, architectural and engineering design services, and construction of the project. The scope of work of this project includes renovation of the existing western half of Terminal 3, design and construction of an expansion of Terminal 3, a secure connector from Terminal 3 to the International Terminal, a new consolidated baggage handling system, and various utility and support infrastructure upgrades.

B. Explain why this service is necessary and the consequence of denial:

As a result of international passenger growth and continued forecasted growth over the long term, as well as a goal to improve the passenger amenities and retrofit the structural systems to meet current seismic code, the Airport will redevelop the western half of Terminal 3. If the services for this project are denied, the project will be delayed, resulting in loss of potential long-term business from United Airlines, decreased level of service to passengers, delayed seismic retrofits to the building structure, delayed improvements to utilities and support infrastructure, delayed overall consolidation of United's baggage handling system, and delays to the long term development plan for the western half of the Airport.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, PSC 40697-14/15

D. Will the contract(s) be renewed?

Yes, if there continues to be a need for services.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The additional time is need to align the contracts with the expected completion dates.

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

The terminal project requires specific expertise in airport terminal development.

B. Reason for the request for modification:

Add money and extend term.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Specialized skills, knowledge, and expertise in airport terminal development, baggage handling systems, design management, integration of airline business requirements, and project and construction management are required.

B. Which, if any, civil service class(es) normally perform(s) this work? 5201, Junior Engineer; 5203, Asst Engr; 5207, Assoc Engineer; 5209, Industrial Engineer; 5211, Eng/Arch/Landscape Arch Sr; 5218, Structural Engineer; 5219, Senior Strucutral Engineer; 5260, Architectural Assistant 1; 5261, Architectural Assistant 2; 5262, Landscape Architect Assoc 1; 5265, Architectural Associate 1; 5266, Architectural Associate 2; 5268, Architect; 5272, Landscape Architect Assoc 2; 5502, Project Manager 1; 5504, Project Manager 2; 5506, Project Manager 3; 5508, Project Manager 4;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

The existing Civil Service classifications do not have the required expertise and specialized skills necessary for the development, project and construction management of a large-scale airport terminal redevelopment project.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: An Airport terminal redevelopment project of this scope and scale does not occur frequently enough to adopt a permanent civil service class.

6. Additional Information