

City and County of San Francisco

RFP 2005-19

Request for Proposals

TechConnect

Community Wireless Broadband Network

Date: December 22, 2005 (rev. Jan. 17, 2006)

Deadline for Submission: 5:00 p.m., February 21, 2006

TABLE OF CONTENTS

Definition of Terms	iii
1. Introduction	1
2. Specifications	3
2.1. Business Model	3
2.2. Term	3
2.3. Coverage	4
2.4. Multi-Use	5
2.5. Open Access	5
2.6. Services and Provisioning	6
2.7. Service Pricing	6
2.8. Network Infrastructure	7
2.9. Customer Service	7
2.10. Security	8
2.11. Privacy	9
2.12. Community Programs	10
3. Submission Requirements	11
3.1. Time/Place for Submission of Proposals	11
3.2. Format and Content of Proposals	11
3.3. PUBLIC VERSION OF PROPOSAL	12
4. Evaluation and Selection Criteria	13
4.1. Firm Qualifications (20 points)	13
4.2. Degree of Compliance with City’s Specifications (60 Points)	13
4.3. Oral Interview (20 points)	13
5. Schedule	14
5.1. pre-proposal conference	14
5.2. Schedule	14
5.3. Contract Award	14
6. Terms and Conditions for Receipt of Proposals	15
6.1. Errors and Omissions in RFP	15
6.2. Inquiries Regarding RFP	15
6.3. Objections to RFP Terms	15
6.4. Addenda to RFP	15
6.5. Term of Proposal	15
6.6. Revision of Proposal	16
6.7. Errors and Omissions in Proposal	16
6.8. Financial Responsibility	16
6.9. Proposer’s Obligations under the Campaign Reform Ordinance	16
6.10. Sunshine Ordinance	17
6.11. Public Access to Meetings and Records	18
6.12. Reservations of Rights by the City	18
6.13. No Waiver	18
6.14. Disadvantaged Business Enterprise Goals	18
6.15. Responsibility for Obtaining Required Authorizations	18
7. Contract Requirements	20
7.1. Standard Contract Provisions	20
7.2. Minimum Compensation Ordinance (MCO)	20
7.3. Health Care Accountability Ordinance (HCAO)	20
7.4. First Source Hiring Program (FSHP)	20
8. Protest Procedures	22
8.1. Protest of Non-Responsiveness Determination	22
8.2. Protest of Contract Award	22
8.3. Delivery of Protests	22
Appendix A - Standard Forms	1
Appendix B – Specifications Matrix	1
Appendix C – Agreement for Professional Services (Form P – 500)	1

DEFINITION OF TERMS

Basic Access Service shall refer to a free or provider-funded broadband Internet access service delivered using the Network at no cost to the subscriber.

Broadband shall refer to an Internet service with a data-transmission rate in both directions (upstream and downstream) of at least 1 Mbps.

Capture Portal shall refer to the web page that unauthenticated users will be redirected to when their mobile device first attaches to the Network.

City shall refer to the City and County of San Francisco.

Compensation shall comprise both cash and non-cash (in-kind) compensation, the forms of which may include, but not be limited to, revenue sharing, profit participation, and equity, and free and discounted services provided to the City or to the public. For evaluating in-kind compensation, free or discounted service will be compared to the most favorable commercial rates offered by the Network Operator for the same service.

Core ISP Services shall refer to value-added features that are bundled with Internet access by a Service Provider, such as e-mail accounts, newsgroup access and virus and/or spam protection.

CPE shall refer to Customer Premise Equipment.

Fixed Broadband shall refer to a service that provides Internet access for a stationary subscriber at a single location (the location where service is provisioned).

Interior Room shall refer to a room within a building that does **not** have at least one wall directly adjacent to and facing a public street.

IP shall refer to Internet Protocol.

Joint Venture Partner shall refer to any organization proposing to provide products or services in response to this RFP through a partnership with a prime bidder.

Mbps shall refer to Megabits per second.

MPH shall refer to Miles Per Hour.

MTBF shall refer to Mean Time Between Failures.

Network shall refer to a wireless broadband Internet access system that is deployed throughout the City and County of San Francisco.

Network Operator shall refer to the winning Proposer to this RFP who is responsible for the design, deployment, operation, maintenance, and upgrade of the Network.

NOC shall refer to Network Operations Center.

Nomadic Broadband shall refer to a service that provides Internet access for a stationary subscriber at a variety of locations throughout the City.

Open Access shall refer to the offering of open, non-discriminatory access to the wireless broadband Internet access transport to non-affiliated and affiliated service providers at equitable rates and terms.

Perimeter Room shall refer to a room within a building that has at least one wall directly adjacent to and facing a Public Street.

POP shall refer to an Internet Point of Presence.

Portable Broadband shall refer to a service that provides Internet access for an in-motion subscriber at a variety of locations throughout the City.

Premium Services shall refer to any broadband Internet access provided over the Network for which a fee is charged by a Service Provider.

Proposer shall refer to any entity providing a proposal in response to this RFP.

Public Street shall refer to a constructed dedicated public right-of-way.

RFI/C shall refer to Request for Information and Comment.

RFP shall refer to Request for Proposal.

Service Provider shall refer to any qualified organization, whether affiliated with the Network Operator or not, who markets, sells, and supports Premium Services over the Network.

Specifications shall refer to items defined in Section 2 of this RFP.

TechConnect shall refer to the City and County of San Francisco initiative to connect San Franciscans to social, educational, informational, and economic opportunities through affordable broadband access, computer hardware, training, and on-line content.

Tier 1 Support shall refer to the process of responding to, diagnosing, and attempting to resolve issues reported by users of the Network.

Tier 2 Support shall refer to the process of responding to issues escalated by Tier 1 Support representatives who are unable to resolve issues reported by users of the Network.

Tier 3 Support shall refer to the process of responding to issues escalated by Tier 2 Support representatives who are unable to resolve issues escalated from Tier 1 Support representatives.

VPN shall refer to Virtual Private Network.

VLAN shall refer to Virtual Local Area Network.

Wi-Fi (Wireless Fidelity) shall refer to wireless technologies adhering to the IEEE 802.11b and 802.11g technical standards.

WiMAX (Wireless Interoperability for Microwave Access) shall refer to wireless technologies adhering to the IEEE 80216 technical standards.

1. INTRODUCTION

Following a review of responses to the City and County of San Francisco's ("City") Wireless TechConnect Request for Information and Comment ("RFI/C"), the City has further defined its desired business model and further detailed its Specifications. The City is issuing this request for proposal ("RFP") to vendors and service providers ("Proposers") for the deployment of a universal, affordable wireless broadband network ("Network") throughout the City.

Universal, affordable wireless broadband Internet access is essential to connect all residents of San Francisco to the social, educational, informational and economic opportunities they deserve. In addition to numerous direct benefits for residents, universal, affordable wireless broadband is critical to connect the City of San Francisco to the increasingly regional, national and global economy of the 21st century.

During the last four years, the U.S. has fallen from third to sixteenth in the world in broadband penetration, and highly skilled jobs have been exported to countries that have exploited advances in technology and telecommunications. Meanwhile, at home, telecommunications companies, cable providers and media conglomerates continue to consolidate. These trends, if unmitigated, will inevitably lead to higher prices, less competition, higher unemployment, loss of competitiveness and less consumer choice for our residents.

As the United States lags behind other nations in equipping its residents to compete in the global economy, San Francisco is stepping forward to bring universal, affordable wireless broadband internet access to all its residents and businesses to boost our economic, social and educational opportunities.

The City has identified the following specific goals for Wireless TechConnect:

- Ensure universal, affordable wireless broadband access for all San Franciscans, especially low-income and disadvantaged residents
- Ensure outdoor and in-building access to the greatest extent possible for all municipal employees, residences, businesses and visitors to the City
- Improve the efficiency of government service delivery
- Promote job creation, business growth and economic development
- Streamline the interaction between government and constituents
- Enhance education and improve the interaction among teachers, students and parents
- Stimulate private investment, competition and consumer choice for broadband services
- Assure continuity in the event of any vendor default or breach of contract and protect the Network from obsolescence over time
- Complement the City's strategy to connect all San Franciscans to the modern economy.

In addition to the goals defined above, the City anticipates that this initiative will provide the following community benefits:

- Enhance healthcare through telemedicine and remote patient care
- Improve the experience for visitors to the City
- Reduce government telecommunications costs
- Promote the City's brand/image
- Enhance backup/contingency measures for disaster response/recovery
- Promote innovative solutions for consumers
- Improve public safety through better communication and interoperability.

The City recognizes that to meet the goals defined above, universal and affordable wireless broadband access must be supplemented with other programs such as low-cost computer purchase, training, support and relevant content. Proposers are encouraged to consider the Specifications stated in this RFP in the broader context of the City's vision for TechConnect, and to elaborate on ways in which their solution responds to these needs.

2. SPECIFICATIONS

The Specifications defined in Section 2 are considered a general list and may not represent a complete list of all hardware, software or services necessary to complete the project.

2.1. BUSINESS MODEL

- a. The Network shall be designed, deployed, operated, maintained and upgraded at no cost to the City. The Network may be municipally owned, privately owned or a hybrid. In connection with this specification, each Proposer shall identify any assumed ownership, branding, marketing and other roles of the City.
- b. The Network shall support a free level of service (Basic Access Service). Proposers shall include the characteristics (e.g., bandwidth, geographic coverage, features) being proposed for this Basic Access Service.
- c. The Network shall support various Premium Services as defined in Section 2.6. Fees may be charged for these Premium Services.
- d. The Network shall support Open Access for Premium Services. Open Access fees for these Premium Services shall be priced to encourage retail fees that are lower than existing service alternatives.
- e. The Network Operator shall promote the open and interconnected nature of the public Internet by operating the Network in a neutral manner that ensures consumers are entitled to:
 - Run applications and use services of their choice, subject to the needs of law enforcement
 - Access the lawful Internet content of their choice
 - Connect their choice of legal devices that do not harm the network
 - Competition among network providers, application and service providers, and content providers.
- f. The Network Operator shall compensate the City for the use of its assets and shall state the forms and value of any such proposed Compensation in exchange for which, as permitted by law and any required authorizations or approvals, the City shall grant to the successful Proposer non-exclusive permission to use municipal assets, including City property and poles.

2.2. TERM

- a. The Proposer shall indicate an initial term, which shall be of no less than five years and no more than ten years. The Proposer shall further indicate whether it proposes any option periods and, if so, the number and length of option periods, provided that no more than two option periods shall be proposed and the combined proposed initial term and extended term(s) should not exceed 18 years in total. The City shall have the authority to approve or disapprove any proposed option periods in its sole, absolute discretion.

2.3. COVERAGE

- a. Wireless Internet access shall be provided, maintained and upgraded throughout the entire City and County of San Francisco. Solutions that provide access and Network upgrades only in parts of the City that are more densely populated or commercially attractive, or that leave entire neighborhoods unserved, will be disfavored.
- b. Outdoor coverage shall be provided for Basic and Premium Services for a minimum of 95% of all areas of the City. An area is considered covered under this requirement if a laptop, handheld or other personal computing device - equipped with a minimum of an 802.11b/g (Wi-Fi) interface - can access the Network at the provisioned service level with no additional hardware required beyond the device's standard wireless interface.
- c. Indoor, Perimeter Room coverage for the ground and second floors of a building shall be provided for Basic and Premium Services for a minimum of 90% of all residential and commercial buildings throughout the City. A building is assumed covered under this Specification if a device located in each Perimeter Room on the ground and second floor of the building can access the Network at the provisioned service level. This coverage requirement may be met by using a Wi-Fi interface built into a user's device, a signal amplifier, a high-gain antenna and/or a dedicated Wi-Fi bridge or other type of CPE.
- d. Indoor, Perimeter Room coverage shall be provided for Basic and Premium Services above the second floor for 90% of all residential and commercial buildings throughout the City. A building is assumed covered under this Specification if all Perimeter Rooms on all floors of the building can access the Network at the provisioned service level. Proposers shall address the following as it relates to this Specification:
 - Does your solution propose to meet this Perimeter-Room coverage Specification using Wi-Fi or another wireless technology?
 - If so, will your solution meet this Perimeter-Room access Specification using an indoor or outdoor mounted antenna?
 - If not, along with the City, what commitment, including financial participation, is your organization willing to make to engage in outreach to and cooperate with building owners, landlords, the City, or other parties to meet this Specification using in-building distribution networks?
- e. Indoor, Interior Room coverage shall be provided for Basic and Premium Services for 90% of all residential and commercial buildings throughout the City. A building is assumed covered under this Specification if all rooms on all floors of the building can access the Network at the provisioned service level. Proposers shall address the following as it relates to their proposed solution:
 - Does your solution propose to meet this Interior Room coverage Specification using Wi-Fi or another wireless technology?
 - If so, will your solution meet this Interior Room coverage Specification using an indoor or outdoor mounted antenna?
 - If not, along with the City, what commitment, including financial participation, is your organization willing to make to engage in outreach to and cooperate with building owners, landlords, the City, or other parties to meet this Specification using in-building distribution networks?

2.4. MULTI-USE

- a. The Network shall support concurrent usage by residents, businesses, institutions, government agencies and anyone else in the City. Examples of usage scenarios may include:
 - Residents and visitors may use the Network for such uses as E-mail, web browsing, instant messaging, entertainment and voice services.
 - Businesses may use the Network for such uses as remote office connectivity, supply chain integration, customer relationship management and inventory control.
 - Institutions such as universities and nonprofits may use the Network for such uses as increased interaction between their institution and students and constituents.
 - Government agencies may use the Network for such uses as automatic vehicle location, access by field staff, remote meter reading, public safety and remote camera/video surveillance.
- b. The Network shall support the logical segmentation of different “domains” of users (e.g., secure access by City agency personnel, secure and/or open access for public users, residential users, business users). This shall include the ability to define and manage different profiles (e.g., VLANs) for authentication, encryption and other service characteristics based on the requirements of each user-domain.
- c. The Network shall support the ability to prioritize traffic for municipal use in cases of emergency or as required by the City. Proposers shall define the methods that will be used to prioritize municipal traffic in cases of natural disaster or other emergency.

2.5. OPEN ACCESS

- a. The Network Operator shall provide Open Access to its wireless broadband Internet access transport services to multiple unaffiliated Service Providers.
- b. When any unauthenticated user is redirected to a Capture Portal on the Network, the user shall have an option to choose between multiple Service Providers and service plans. The Network Operator may receive priority placement for any Premium Services it may offer on the Capture Portal; however, all Service Providers shall also be clearly and reasonably presented.
- c. The Network shall support unilateral, inbound roaming relationships whereby subscribers to other fee-based Wi-Fi services (e.g., T-Mobile, Sprint) may gain access to Premium Services provided over the Network.
- d. The Network shall support unilateral, outbound roaming relationships whereby subscribers to Premium Services over the Network may gain access to other fee-based Wi-Fi services (e.g., T-Mobile, Sprint).
- e. The Network Operator, and any Service Provider affiliated with the Network Operator, may also provide retail-branded Premium Services over the Network.

2.6. SERVICES AND PROVISIONING

- a. The Network shall provide a Fixed Broadband Premium Service. This service must support 802.11 b/g devices at a best-effort minimum 1 Mbps symmetric data transmission rate, a dynamic IP address and other Core ISP Services.
- b. The Network shall provide a Nomadic Broadband Premium Service. This service must support 802.11 b/g devices at a best-effort minimum 1 Mbps symmetric data transmission rate, a dynamic IP address and other Core ISP Services.
- c. The Network shall provide a Portable Broadband Premium Service. This service must support 802.11 b/g devices at a best-effort minimum 1 Mbps symmetric data transmission rate, a dynamic IP address and other Core ISP Services. Session-level connectivity must be maintained for in-motion subscribers at a minimum speed of 30 MPH.
- d. The Network shall provide a Fixed Broadband Premium Service at a guaranteed minimum 3 Mbps symmetric data transmission rate (e.g., a wireless T-1 alternative).
- e. The Network Operator shall allow Service Providers to provision Premium Services on a monthly, weekly and daily basis.
- f. Payment methods for all Premium Services must include credit and debit card. Other methods must be proposed for users who do not have the ability to pay with credit or debit cards (e.g., pre-paid vouchers, top-off cards).
- g. Proposals shall include the expected costs of any required CPE for each coverage Specification stated in Section 2.3 and who will be responsible for CPE costs during the provisioning process.

2.7. SERVICE PRICING

- a. Proposers shall estimate the rates for any Premium Services to be marketed to Service Providers by the Network Operator. These rates shall be defined for all services in Section 2.6, Services and Provisioning. All rates, terms and conditions for Service Providers not affiliated with the Network Operator shall be as favorable as those provided to the Network Operator and any affiliated Service Providers.
- b. Proposers shall estimate the rates for any Premium Services to be marketed to the public by the Network Operator.

2.8. NETWORK INFRASTRUCTURE

- a. The Network shall include a wireless Access Tier that supports connectivity from 802.11b/g devices through the City.
- b. The Network shall include a fixed wireless point-to-multipoint solution as a Backhaul Tier for aggregating Wi-Fi traffic from the Access Tier.
- c. The Network shall include a fixed wireless point-to-point solution, using licensed or leased spectrum, as a Distribution Tier for aggregating traffic from the Backhaul Tier back to an Internet POP.
- d. All Network traffic shall be aggregated back to a high-speed Internet backbone service at a POP, which shall support layer-three network transit for Service Providers. Provisions shall be made for redundancy of the POP facility.
- e. The Network shall support fault tolerance mechanisms to mitigate or eliminate single points of failure and ensure high reliability. The Network shall support reliability levels of 99.9% for the Access Tier and 99.999% for the Backhaul Tier, Distribution Tier and POP. Proposers shall identify the MTBF for any proposed network equipment and explain the processes that will be used to guarantee these service levels.
- f. The Network shall be easily scaled and upgraded in a modular fashion to support additional subscribers, new applications and new requirements in order to meet evolving user demands. Proposers shall estimate the percentage of the initial Network capital cost that will be invested in upgrades during the contract term and elaborate on what steps they will take to determine when Network upgrades are required and how they will be rolled out. Proposers shall describe how the City can evaluate the Network Operator's performance relevant to this sub-section.
- g. All outdoor network equipment shall comply with IP56/NEMA4 dust and water ingress ratings, must withstand ambient temperature ranges of -40 C to +50 C and must adhere to all other applicable local ordinances.
- h. Proposers shall define any initial and future ability for their solution to provide, integrate with, coexist with, or complement 4.9 GHz wireless public safety technology that may be of value to the City's public safety agencies. The Network shall not prohibit or negatively impact any initiative by the City during the contract term related to the deployment of wireless public safety technology.
- i. The Network shall support backup power for all network equipment sufficient to ensure continuous operation during a loss of electrical power. Proposers shall state the amount of time their solution will operate without electrical power and elaborate on any initial or future commitments they will make to increase backup power support.

2.9. CUSTOMER SERVICE

- a. At a minimum, Tier 1 Support for Basic Access Service shall be provided by the Network Operator for issues related to:

- Connectivity problems
 - Service interruption/degradation
- b. Tier 1 Support for all Premium Services shall be provided by all Service Providers (including the Network Operator if they are also directly providing Premium Services). Tier 1 Support shall provide subscribers with phone, web, e-mail and instant messaging support options for at least the following issues:
- Sales inquiries
 - Order status
 - Service cancellation
 - Service setup
 - Connectivity problems
 - Service interruption/degradation
 - Credits and refunds processing
 - Account and billing inquiries
 - Disconnect and relocation requests.
- c. Tier 2 Support shall be provided by the Network Operator for all Service Providers. Tier 2 Support must provide Service Providers with phone and e-mail support options for at least the following issues:
- Escalation of issue not resolved by Service Provider's Tier 1 representatives
 - Proactive and reactive network status information
 - Three-party calling with Tier 2 Support agents, Tier 1 Support agents and subscribers
 - Settlement and billing inquiries between Service Provider and the Network Operator
- d. Tier 3 Support shall be provided by the Network Operator for all Service Providers. This shall include at least the following:
- 7x24x365 management of personnel at the NOC
 - 7x24x365 pager and phone support for Service Providers
 - Call escalation of critical issues not resolved by Tier 2 Support representatives
 - Proactive publishing of network status information, alerts, etc. by the Network Operator

2.10. SECURITY

The Network shall support multi-layered security protocols and methods to include, at a minimum, the following:

- a. Physical security for all critical network equipment components via secured facilities.
- b. Mechanisms to prevent or mitigate the risk of hackers, spammers, denial of service and other forms of malicious attacks on or through the Network. These mechanisms should balance the need to prevent these attacks, while at the same time not punishing or burdening unnecessarily all users of the Network.

- c. No client software that is specific to the Network Operator or Service Provider(s) shall be required on PCs, laptops, or other mobile devices in order to use the Network.
- d. Support for Media Access Control (“MAC”) address filtering.
- e. Support for Wired Equivalent Privacy (“WEP”) encryption, including both 64 and 128 bit keys.
- f. Support for Temporal Key Integrity Protocol (“TKIP”) encryption.
- g. Support for Advanced Encryption Standard (“AES”) encryption.
- h. Support for Wi-Fi Protected Access (“WPA”).
- i. Support for 802.1x authentication using Extensible Authentication Protocol (“EAP”) and Remote Authentication Dial-In User Service (“RADIUS”).
- j. Support for the suppression of Extended Service Set Identifier (“ESSID”) broadcasts.
- k. Support for multiple ESSIDs and the ability to map ESSIDs individually to Virtual LANs (“VLANs”).
- l. Support for filtering of traffic based on Internet Protocol (“IP”) addresses, subnets and Transmission Control Protocol (“TCP”) ports.
- m. Support for VPN tunneling using Internet Protocol Security (“IPSec”). This VPN support must support true end-to-end encryption, regardless of at what point in the Network users elect to terminate their session.
- n. Support for encryption of all control and network management traffic.

2.11. PRIVACY

- a. Proposers shall provide a copy of any and all privacy policies they will apply to users of any Basic and Premium Service provided by the Network Operator and any affiliated Service Providers.
- b. Proposers shall certify that each privacy policy complies with all applicable federal and state laws.
- c. For each privacy policy, Proposers shall identify how it shall be communicated to users on the Network and how users' acceptance of the policy shall be obtained.
- d. Proposers shall explain any privacy policy that will be required for unaffiliated Service Providers

To help the City better understand Proposers' privacy policies, Proposers shall explain how their policies address the following questions:

- What personal information is collected about users?
- How is this information used?
- How long is this information stored?
- With whom is this information shared?
- Is this information commercialized in any way?
- Is this information correlated to a specific user, device or location?
- Are mechanisms available to allow users to opt in or opt out of any service that collects, stores, or profiles information on the searches performed, websites visited, e-mails sent, or any other use of the Network?
- Are mechanisms available to allow users to opt in or opt out of any service that tracks information about the user's physical location?
- Are users enumerated or assigned any unique number that can be used to track them from session to session?
- Are policies in place to respond to legal demands for users' personal information in accordance with applicable laws?
- Are users allowed access to all information collected about them?
- Are users provided with a mechanism to review this information and to correct inaccuracies or delete information?

2.12. COMMUNITY PROGRAMS

The City seeks to complement universal, affordable wireless broadband access with social programs to promote digital inclusion, including affordable end-user hardware, training and support, and the development of community relevant content for low-income and disadvantaged residents.

- a. Proposers shall elaborate on how their solution supports these goals.
- b. Proposers shall identify any assumed roles of the City in its approach.

- c. Proposers shall elaborate on how their solution supports these programs, any commitments for their firm's involvement and any assumptions for the role the City will have in these programs.

3. SUBMISSION REQUIREMENTS

3.1. TIME/PLACE FOR SUBMISSION OF PROPOSALS

Proposals must be **received** by 5:00 p.m., on February 21, 2006. Postmarks will not be considered in judging the timeliness of submissions. Proposals may be delivered in person and left with the DTIS Receptionist at 875 Stevenson Street, 5th Floor, or mailed to:

TechConnect RFP 2005-19
Department of Telecommunications and Information Services
City & County of San Francisco
875 Stevenson Street, 5th Floor
San Francisco, CA 94103-0948

Proposers shall submit fifteen copies of the proposal and one electronic disk with Microsoft Word and Adobe versions of the proposal in a sealed envelope clearly marked **Wireless TechConnect – Community Wireless Broadband Network** to the above location. Proposals that are submitted by fax will not be accepted. Late submissions will not be considered. Proposals must be submitted in 3-ring binders and printed on both sides of recycled paper. **The Form 10-K and Form 8-Ks must be submitted in searchable electronic format only. Submit only one electronic copy of the Form 10K and the Form 8-Ks. Do not submit hardcopies of these Forms.**

3.2. FORMAT AND CONTENT OF PROPOSALS

Please submit the following information in the order specified below:

Volume 1 - Introduction and Executive Summary

Provide a letter of introduction signed by a person authorized by your firm to obligate your firm to perform the commitments contained in the proposal. Submission of the letter will constitute a representation by your firm that your firm is willing and able to perform the commitments contained in the proposal.

Provide an executive summary of the proposed solution.

Volume 2 - Firm Qualifications

Provide information on your firm's background and qualifications, which address the following:

- Name, address, e-mail address, and telephone number of a contact person
- A brief description of your firm, as well as any joint venture partner firms
- If the proposal is submitted by a partnership and/or joint venture, provide full information concerning the nature and structure of the partnership and/or joint venture, including:

- Entity(ies) that will be guaranteeing contract performance
- Date of joint venture or partnership
- Does the agreement between members comprising the joint venture make each member jointly and severally liable for contractual obligations of this project?

- References for not more than three projects similar in size and scope performed by your firm, including client, reference, and telephone numbers, staff members who worked on each project, budget, schedule and a one-page project summary. If joint venture partners are proposed, provide references for each.

- A summary of the estimated up-front and on-going capital and operating costs to design, build and manage the Network throughout the proposed term of the contract.

- Financial details that demonstrate your firm’s financial capacity to undertake and complete the project as proposed, which shall include:
 - Current audited statement of financial condition and financial statements for the two prior years, prepared by an independent certified public accountant
 - Statement disclosing any state or federal bankruptcy or insolvency proceeding that Proposer has filed or with which Proposer is otherwise involved
 - Most recent Form 10-K filed by the Proposer with the U.S. Securities and Exchange Commission, and copies of all Form 8-Ks filed since the filing of the most recent 10-K. **The Form 10-K and Form 8-Ks must be submitted in searchable electronic format only. Do not submit hardcopies of these forms.**
 - Any other information not specifically itemized above that demonstrates its financial capacity.

Volume 3 - Solution Explanation

Provide information on your firm’s proposed solution to address the following:

- a. A detailed description of the proposed solution, including architecture that is expected to meet the Specifications identified in Section 2. Proposers shall enumerate their responses according to the Specifications stated in Section 2.

- b. Completion of the Specifications Matrix in Appendix B.

3.3. PUBLIC VERSION OF PROPOSAL

Each Proposer shall provide one copy of its full proposal that may be made available for public inspection. This copy shall consist of the entirety of the information provided in response to Section 3.2 above, minus *limited redactions only for those elements in each response which are trade secrets as that term is defined in Civil Code section 3426.1(d) or which are otherwise exempt by law from disclosure*. The City reserves the right to disqualify from consideration any Proposer who fails to so limit its redactions for confidentiality. Each volume of the public version of the proposal shall be clearly labeled "PUBLIC VERSION" in large print. Each Proposer shall provide one electronic disk, clearly labeled “PUBLIC VERSION” in large print, with Microsoft Word and Adobe versions of the public version of its proposal.

4. EVALUATION AND SELECTION CRITERIA

The City intends to evaluate written proposals in accordance with the criteria itemized below.

4.1. FIRM QUALIFICATIONS (20 POINTS)

- a. Financial capacity
- b. Quality of customer references for projects of similar size and scope
- c. Level of technical expertise to design, deploy and operate the Network

4.2. DEGREE OF COMPLIANCE WITH CITY'S SPECIFICATIONS (60 POINTS)

- a. Degree of satisfaction of Specifications set forth in Section 2
- b. Viability of proposed solutions
- c. Understanding of the City's vision, goals and benefits set forth in Section 1
- d. Value of proposed Compensation

4.3. ORAL INTERVIEW (20 POINTS)

Following the evaluation of the written proposals, the **three** Proposers receiving the highest scores from the above criteria shall be invited to an oral interview. The interview will consist of standard questions asked of each of the **three** Proposers. Scoring will be based on the Proposers' performance with respect to the criteria set forth in items 1 and 2 above. Scoring from the oral interview shall then be added to scoring from criteria 1 and 2 above for the final selection.

5. SCHEDULE

5.1. PRE-PROPOSAL CONFERENCE

At this time, the City does not intend to conduct a Pre-Proposal Conference.

5.2. SCHEDULE

The anticipated schedule for this RFP is shown below:

<u>Proposal Phase</u>	<u>Date</u>
RFP issued by the City	Thursday, December 22, 2005
Deadline for submission of written questions and requests for clarification	Monday, January 9, 2006
City's response to written questions and requests for clarification	Tuesday, January 17, 2006
Proposals due	Tuesday, February 21, 2006

5.3. CONTRACT AWARD

DTIS will select a Proposer with whom DTIS staff shall commence contract negotiations. The selection of any proposal shall not imply acceptance by the City of all terms of the proposal, which may be subject to further negotiation and approvals before the City may be legally bound thereby. If a satisfactory contract cannot be negotiated in a reasonable time, DTIS, in its sole discretion, may terminate negotiations with the highest ranked Proposer and begin contract negotiations with the next highest ranked Proposer.

6. TERMS AND CONDITIONS FOR RECEIPT OF PROPOSALS

6.1. ERRORS AND OMISSIONS IN RFP

Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify DTIS by e-mail to techconnect@sfgov.org, if the Proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be submitted to DTIS promptly after discovery, but in no event later than five working days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda posted on the City's bid website.

6.2. INQUIRIES REGARDING RFP

All inquiries regarding the RFP and notifications of an intent to request written modification or clarification of the RFP, must be submitted by e-mail to techconnect@sfgov.org. Any substantive inquiries and replies will be issued as addenda posted on the City's bid website. No questions or requests for clarification will be accepted after Monday, January 9, 2006. Information regarding City assets that may potentially be available for use as part of a wireless broadband network can be found on the City's website at www.sfgov.org/techconnect.

6.3. OBJECTIONS TO RFP TERMS

Should a Proposer object on any ground to any provision or legal requirement set forth in this RFP, the Proposer must, not more than ten calendar days after the RFP is issued, provide notice to DTIS setting forth with specificity the grounds for the objection. This notice shall be submitted by e-mail to techconnect@sfgov.org. Failure of a Proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

6.4. ADDENDA TO RFP

DTIS may modify the RFP, prior to the proposal due date, by issuing written addenda. Addenda will be posted on the City's TechConnect website at www.sfgov.org/techconnect. The Proposer shall be responsible for ensuring that its proposal reflects any and all addenda issued by DTIS prior to the proposal due date regardless of when the proposal is submitted. Therefore, the City recommends that the Proposer monitor the City's TechConnect website to ensure the Proposer is aware of all addenda.

6.5. TERM OF PROPOSAL

Submission of a proposal signifies that the proposed services and prices are valid for 180 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

6.6. REVISION OF PROPOSAL

A Proposer may revise a proposal on the Proposer's own initiative at any time before the deadline for submission of proposals. The Proposer must submit the revised proposal in the same manner as the original. A revised proposal must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any Proposer.

At any time during the proposal evaluation process, DTIS may require a Proposer to provide oral or written clarification of its proposal. DTIS reserves the right to make an award without further clarifications of proposals received.

6.7. ERRORS AND OMISSIONS IN PROPOSAL

Failure by DTIS to object to an error, omission, or deviation in the proposal will in no way modify the RFP or excuse the vendor from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

6.8. FINANCIAL RESPONSIBILITY

The City accepts no financial responsibility for any costs incurred by a firm in responding to this RFP. Submissions of the RFP will become the property of the City and may be used by the City in any way deemed appropriate.

6.9. PROPOSER'S OBLIGATIONS UNDER THE CAMPAIGN REFORM ORDINANCE

Proposers must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

If a Proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the Proposer is prohibited from making contributions to:

- the officer's re-election campaign
- a candidate for that officer's office
- a committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (i) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (ii) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

- **Criminal.** Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
- **Civil.** Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
- **Administrative.** Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, Proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

6.10. SUNSHINE ORDINANCE

In accordance with S.F. Administrative Code Section 67.24(e), Proposers' responses to RFPs and all other records of communications between the 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 benefits until and unless that person or organization is awarded the contract or benefit. Those elements in each response which are trade secrets as that term is defined in Civil Code section 3426.1(d) or otherwise exempt by law from disclosure and which are prominently marked as "TRADE SECRET," "CONFIDENTIAL," OR "PROPRIETARY" may be exempt from disclosure. The City shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked if disclosure is deemed to be required by law or by an order of the Court. In the event the City is required to defend an action on a Public Records Act or Sunshine Ordinance request for any of the elements of a response that are marked "confidential," "proprietary," or "trade secret," Proposer agrees, upon submission of its response for the City's consideration, to defend and indemnify the City from all costs and expenses, including attorneys' fees, in any action or liability arising under the Public Records Act.

The City reserves the right to make non-proprietary information in Proposers' responses available for public inspection prior to the time of contract award.

6.11. PUBLIC ACCESS TO MEETINGS AND RECORDS

If a Proposer is a non-profit entity that 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 S.F. Administrative Code, the Proposer must comply with Chapter 12L. The Proposer must include in its proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Proposer's meetings and records, and (2) a summary of all complaints concerning the Proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the Proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in Proposer's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

6.12. RESERVATIONS OF RIGHTS BY THE CITY

The issuance of this RFP does not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right at any time to:

- Waive or correct any defect or informality in any response, proposal, or proposal procedure;
- Reject any or all proposals
- Reissue a Request for Proposals
- Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;
- Procure any materials, equipment or services specified in this RFP by any other means; or
- Determine that no project will be pursued.

6.13. NO WAIVER

No waiver by the City of any provision of this RFP shall be implied from any failure by the City to recognize or take action on account of any failure by a Proposer to observe any provision of this RFP.

6.14. DISADVANTAGED BUSINESS ENTERPRISE GOALS

The successful Proposer will be required to enter into an agreement with the City to provide opportunities for disadvantaged business enterprises in the performance of the project as appropriate and will also be required to agree to make good faith efforts to hire disadvantaged workers where appropriate.

6.15. RESPONSIBILITY FOR OBTAINING REQUIRED AUTHORIZATIONS

The successful Proposer will be responsible for obtaining any required agreements, authorizations, or approvals that may be necessary to secure the use of City facilities (e.g., City-owned street poles or City-owned buildings) or third party facilities (e.g., utility poles not owned by the City) for the provision of services over the Network. With respect to City facilities, the City will facilitate the obtaining of any necessary authorizations, approvals, or agreements as it deems appropriate and as

permitted by law. The successful proposer will also be responsible for obtaining from the City or third parties as appropriate any necessary agreements for the provision of utility services (e.g., electricity) that are required for the operation of the Network.

7. CONTRACT REQUIREMENTS

7.1. STANDARD CONTRACT PROVISIONS

The successful Proposer may be required to enter into a contract containing provisions substantially in the form of those in the Agreement for Professional Services, attached hereto as Appendix C. The City will determine insurance coverages and limits, and bond requirements after reviewing the successful proposal. Required insurance coverage may include, but not be limited to: General Liability, Workers' Compensation, Automobile Liability, Professional Liability, and Equipment Coverage. Failure to timely execute a contract, or to furnish any and all required insurance certificates and policy endorsements, surety bonds or other required materials shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another firm and may proceed against the original selectee for damages.

Proposers are urged to pay special attention to the requirements of the Minimum Compensation Ordinance (§ 43 in the Agreement), the Health Care Accountability Ordinance (§ 44 in the Agreement), and the First Source Hiring Program (§ 45 in the Agreement), as set forth in paragraphs B, C and D below.

7.2. MINIMUM COMPENSATION ORDINANCE (MCO)

The successful Proposer may be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements. For the contractual requirements of the MCO, see § 43.

Note that the gross hourly compensation for covered employees for For-Profit entities is \$10.77 beginning January 1, 2005.

The MCO rate for non-profit corporations and government entities shall remain at \$9.00.

Additional information regarding the MCO is available on the web at <http://www.sfgov.org/oca/lwlh.htm>.

7.3. HEALTH CARE ACCOUNTABILITY ORDINANCE (HCAO)

The successful Proposer may be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at <http://www.sfgov.org/oca/lwlh.htm>.

7.4. FIRST SOURCE HIRING PROGRAM (FSHP)

The successful Proposer may be required to agree to comply fully with and be bound by the provisions of the First Source Hiring Program ordinance, as set forth in S.F. Administrative Code Chapter 83. Generally, this ordinance requires contractors to notify the First Source Hiring Program of available entry level jobs and provide the Workforce Development System with the first opportunity to refer qualified individuals for employment.

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at www.sfgov.org/moed/fshp.htm.

8. PROTEST PROCEDURES

8.1. PROTEST OF NON-RESPONSIVENESS DETERMINATION

Within five working days of the City's issuance of a notice of non-responsiveness, any firm that has submitted a proposal and believes that the City has incorrectly determined that its proposal is non-responsive may submit notice of protest by e-mail to techconnect@sfgov.org. Such notice of protest must be received by the City on or before the fifth working day following the City's issuance of the notice of non-responsiveness. The notice of protest must include a statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be made by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

8.2. PROTEST OF CONTRACT AWARD

Within five working days of the City's issuance of a notice of intent to award the contract, any firm that has submitted a responsive proposal and believes that the City has incorrectly selected another Proposer for award may submit notice of protest by e-mail to techconnect@sfgov.org. Such notice of protest must be received by the City on or before the fifth working day after the City's issuance of the notice of intent to award.

The notice of protest must include a statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be made by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

8.3. DELIVERY OF PROTESTS

All protests must be sent by e-mail to techconnect@sfgov.org by the due date.

APPENDIX A - STANDARD FORMS

Before the City can award any contract to a contractor, that contractor must file three standard City forms (items 1-3 on the chart). Because many contractors have already completed these forms, and because some informational forms are rarely revised, the City has not included them in the RFP package. Instead, this Appendix describes the forms, where to find them on the Internet (see bottom of page 2), and where to file them. If a contractor cannot get the documents off the Internet, the contractor should call (415) 554-6248 or e-mail Purchasing (purchasing@sfgov.org) and Purchasing will fax, mail or e-mail them to the contractor.

If a contractor has already filled out items 1-3 (See note under item 3.) on the chart, **the contractor should not do so again unless the contractor's answers have changed.** To find out whether these forms have been submitted, the contractor should call Controller at (415) 554-6702.

Item	Form Name and Internet Location	Form Number	Description	Return the Form to; For more information
1.	Request for Taxpayer Identification Number and Certification http://www.sfgov.org/oca/purchasing/forms.htm	W-9	The City's City needs the contractor's taxpayer ID number on this form. If a contractor has already done business with the City, this form is not necessary because the City already has the number.	Office of Contract Admin. Purchasing Division City Hall, Room 430 San Francisco, CA 94102-4685 (415) 554-6702
2.	Business Tax Declaration http://www.sfgov.org/oca/purchasing/forms.htm	P-25	All contractors must sign this form to determine if they must register with the Tax Collector, even if not located in San Francisco. All businesses that qualify as "conducting business in San Francisco" must register with the Tax Collector.	Office of Contract Admin. Purchasing Division City Hall, Room 430 San Francisco, CA 94102-4685 (415) 554-6718
3.	S.F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits http://www.sfgov.org/oca/purchasing/forms.htm - In Vendor Profile Application	HRC-12B-101	Contractors tell the City if their personnel policies meet the City's requirements for nondiscrimination against protected classes of people, and in the provision of benefits between employees with spouses and employees with domestic partners. Form submission is not complete if it does not include the additional documentation asked for on the form. Other forms may be required, depending on the contractor's answers on this form. (Note: Contract-to-Contract Compliance status vendor must fill out this form each time contracting with the City.)	Human Rights Comm. 25 Van Ness, Suite 800 San Francisco, CA 94102-6059 (415) 252-2500

WHERE THE FORMS ARE ON THE INTERNET

Office of Contract Administration

Homepage: <http://www.sfgov.org/oca/>

Purchasing forms: <http://www.sfgov.org/oca/purchasing/forms.htm>

Human Rights Commission

Search for HRC forms under HRC Homepage: http://www.sfgov.org/site/sfhumanrights_index.asp

APPENDIX B – SPECIFICATIONS MATRIX

As explained in Section 3.2, Proposers shall complete the following matrix with respect to their proposals and shall provide the completed matrix in Volume 3 of their proposals. Please note that the descriptions provided in the Specification Summary column are only abbreviated summaries. In completing this matrix, Proposers should refer to the full statement of the specification in the applicable subsection of Section 2. The information provided in the Priority column is to assist Proposers in understanding the relative priority levels the City attaches to each specification. For each specification, Proposers shall identify whether their proposals are either fully compliant, partially compliant, or not compliant with the specification. The far right column provides an opportunity for Proposers to provide additional detail or comments.

Appendix B- Specifications Matrix

Insert INTRO

Spec. No.	Specification Summary	Priority	Fully Compliant	Partially Compliant	Not Compliant	Detail and/or Comments
2.1(a)	Network designed, deployed, operated, maintained and upgraded at no cost to the City	HIGH				
2.1(b)	Network supports a free level of service ("Basic Service")	HIGH				
2.1(c)	Network supports various Premium Services as defined in Section 2.5	HIGH				
2.1(d)	Network supports Open Access for Premium Services	HIGH				
2.1(e)	Network is operated in a neutral manner that ensures consumers are entitled to the benefits described in 2.1(e)	HIGH				
2.1(f)	Proposer compensates the City for the use of its assets	HIGH				
2.2(a)	Proposer indicates an initial contract term, no less than five (5) years and no more than ten (10) years. Proposer indicates desired option periods. Total does not exceed eighteen (18) years	HIGH				
2.3(a)	Wireless Internet access provided throughout the entire City and County of San Francisco.	HIGH				
2.3(b)	Outdoor coverage provided for Basic	HIGH				

Spec. No.	Specification Summary	Priority	Fully Compliant	Partially Compliant	Not Compliant	Detail and/or Comments
	and Premium Services for a minimum of 95% of all areas of the City					
2.3(c)	Indoor, Perimeter Room coverage provided for Basic and Premium Services for the ground and second floors of a minimum of 90% of all buildings throughout the City	HIGH				
2.3(d)	Indoor, Perimeter Room coverage provided for Basic and Premium Services above the second floor for 90% of all residential and commercial buildings throughout the City	MEDIUM				
2.3(e)	Indoor, Interior Room coverage provided for Basic and Premium Services for 90% of all buildings throughout the City	MEDIUM				
2.4(a)	Network supports concurrent usage by residents, businesses, institutions, government agencies and anyone else in the City	HIGH				
2.4(b)	Network supports the logical segmentation of different "domains" of users (e.g. secure access by City agency personnel, secure and/or open access	HIGH				

Spec. No.	Specification Summary	Priority	Fully Compliant	Partially Compliant	Not Compliant	Detail and/or Comments
	for public users, residential users, business users)					
2.4(c)	Network supports the ability to prioritize traffic for municipal use in cases of emergency or as required by the City	HIGH				
2.5(a)	Network Operator provides access to its wireless broadband Internet access transport services to multiple unaffiliated Service Providers	HIGH				
2.5(b)	When unauthenticated user is redirected to a Capture Portal on the Network, the user has option to choose between multiple Service Providers and service plans	HIGH				
2.5(c)	Network supports unilateral, inbound roaming relationships	MEDIUM				
2.5(d)	Network supports unilateral, outbound roaming relationships	MEDIUM				
2.5(e)	Network Operator, and/or any Service Provider affiliated with the Network Operator, may also provide retail-branded Premium Services over the Network	MEDIUM				
2.6(a)	Network provides a Fixed Broadband Premium Service, supporting 802.11 b/g devices at a best-effort	HIGH				

Spec. No.	Specification Summary	Priority	Fully Compliant	Partially Compliant	Not Compliant	Detail and/or Comments
	minimum 1 Mbps symmetric data transmission rate, a dynamic IP address and other Core ISP Services					
2.6(b)	Network provides a Nomadic Broadband Premium Service, supporting 802.11 b/g devices at a best-effort minimum 1 Mbps symmetric data transmission rate, a dynamic IP address and other Core ISP Services	HIGH				
2.6(c)	Network provides a Portable Broadband Premium Service, supporting 802.11 b/g devices at a best-effort minimum 1 Mbps symmetric data transmission rate, a dynamic IP address and other Core ISP Services. Session-level connectivity maintained for in-motion subscribers at a minimum speed of 30 MPH	HIGH				
2.6(d)	Network provides a Fixed Broadband Premium Service at a guaranteed minimum 3 Mbps symmetric data transmission rate (e.g. a wireless T-1 alternative)	HIGH				
2.6(e)	Network Operator allows Service Providers to provision Premium Services on a monthly, weekly and daily basis	MEDIUM				
2.6(f)	Payment methods	HIGH				

Spec. No.	Specification Summary	Priority	Fully Compliant	Partially Compliant	Not Compliant	Detail and/or Comments
	for all Premium Services include credit and debit card. Other methods exist for users who do not have the ability to pay with credit or debit cards (e.g. pre-paid vouchers, top-off cards)					
2.6(g)	Expected costs of any required CPE for each coverage Specification stated in Section 2.3 and who will be responsible for CPE costs during the provisioning process is provided	HIGH				
2.7(a)	Estimated rates are defined for any Premium Services to be marketed to Service Providers by the Network Operator, for all services in Section 2.6. Services and Provisioning. Rates, terms and conditions for Service Providers not affiliated with the Network Operator are as favorable as those provided to the Network Operator and any affiliated Service Providers	HIGH				
2.7(b)	Estimated rates are defined for any Premium Services to be marketed to the public by the Network Operator	HIGH				
2.8(a)	Network includes a wireless Access Tier that supports connectivity from	HIGH				

Spec. No.	Specification Summary	Priority	Fully Compliant	Partially Compliant	Not Compliant	Detail and/or Comments
	802.11b/g devices through the City					
2.8(b)	Network includes a fixed wireless point-to-multipoint solution as a Backhaul Tier for aggregating Wi-Fi traffic from the Access Tier	HIGH				
2.8(c)	Network includes a fixed wireless point-to-point solution, using licensed or leased spectrum, as a Distribution Tier for aggregating traffic from the Backhaul Tier back to an Internet POP	HIGH				
2.8(d)	Network traffic is aggregated back to a high-speed Internet backbone service at a POP, which supports layer-three network transit for Service Providers	HIGH				
2.8(e)	Network supports fault tolerance mechanisms to mitigate and/or eliminate single points of failure and ensure high reliability. Network support reliability levels of 99.9% for the Access Tier and 99.999% for the Backhaul Tier, Distribution Tier and POP	HIGH				
2.8(f)	Network is easily scaled and upgraded in a modular fashion to support additional subscribers, new applications and new requirements,	HIGH				

Spec. No.	Specification Summary	Priority	Fully Compliant	Partially Compliant	Not Compliant	Detail and/or Comments
	in order to meet evolving user demands					
2.8(g)	All outdoor network equipment complies with IP56/NEMA4 dust and water ingress ratings, withstands ambient temperature ranges of -40 C to +50 C and adheres to all other applicable local ordinances	HIGH				
2.8(h)	Initial and/or future ability defined for solution to provide, integrate with, coexist with or complement 4.9 GHz wireless public safety technology that may be of value to the City's public safety agencies	HIGH				
2.8(i)	Network supports backup power for all network equipment sufficient to ensure continuous operation during a loss of electrical power	MEDIUM				
2.9(a)	Tier 1 Support for Basic Access Service is provided by the Network Operator for issues related to connectivity problems and service interruption or degradation	HIGH				
2.9(b)	Tier 1 Support for all Premium Services is required of all Service Providers	HIGH				
2.9(c)	Tier 2 Support is	HIGH				

Spec. No.	Specification Summary	Priority	Fully Compliant	Partially Compliant	Not Compliant	Detail and/or Comments
	provided by the Network Operator for all Service Providers					
2.9(d)	Tier 3 Support shall be provided by the Network Operator for all Service Providers	HIGH				
2.10(a)	Physical security is provided for all critical network equipment components via secured facilities	HIGH				
2.10(b)	Mechanisms are provided to prevent or mitigate the risk of hackers, spammers, denial of service and other forms of malicious attacks on or through the network	HIGH				
2.10(c)	No client software that is specific to the Network Operator or Service Provider(s) is required on PCs, laptops or other mobile devices in order to use the network	MEDIUM				
2.10(d)	Support for Media Access Control ("MAC") address filtering	MEDIUM				
2.10(e)	Support for Wired Equivalent Privacy ("WEP") encryption, including both 64 and 128 bit keys	HIGH				
2.10(f)	Support for Temporal Key Integrity Protocol ("TKIP") encryption	HIGH				
2.10(g)	Support for Advanced Encryption	HIGH				

Spec. No.	Specification Summary	Priority	Fully Compliant	Partially Compliant	Not Compliant	Detail and/or Comments
	Standard (“AES”) encryption					
2.10(h)	Support for Wi-Fi Protected Access (“WPA”)	HIGH				
2.10(i)	Support for 802.1x authentication using Extensible Authentication Protocol (“EAP”) and Remote Authentication Dial-In User Service (“RADIUS”)	HIGH				
2.10(j)	Support for the suppression of Extended Service Set Identifier (“ESSID”) broadcasts	HIGH				
2.10(k)	Support for multiple ESSIDs and the ability to map ESSIDs individually to Virtual LANs (“VLANs”)	HIGH				
2.10(l)	Support for filtering of traffic based on Internet Protocol (“IP”) addresses, subnets and Transmission Control Protocol (“TCP”) ports	MEDIUM				
2.10(m)	Support for VPN tunneling using Internet Protocol Security (“IPSec”)	HIGH				
2.10(n)	Support for encryption of all control and network management traffic	MEDIUM				
2.11(a)	Proposers provide a copy of any and all privacy policies they will apply to users of any Basic and Premium Service provided by the Network	HIGH				

Spec. No.	Specification Summary	Priority	Fully Compliant	Partially Compliant	Not Compliant	Detail and/or Comments
	Operator and any affiliated Service Providers.					
2.11(b)	Proposers certify that each privacy policy complies with all applicable federal and state laws.	HIGH				
2.11(c)	Proposers identify how each policy is communicated to users on the Network and how users' acceptance of the policy is obtained	HIGH				
2.11(d)	Proposers explain any privacy policy that it requires for unaffiliated Service Providers	HIGH				
2.12(a)	Proposal elaborates on how solution supports digital inclusion goals.	HIGH				
2.12(b)	Proposal identifies assumed roles of the City in its approach.	HIGH				

APPENDIX C – AGREEMENT FOR PROFESSIONAL SERVICES (FORM P – 500)

Appendix C contains a sample City contract entitled Agreement of Professional Services (Form P-500).

APPENDIX C – AGREEMENT FOR PROFESSIONAL SERVICES (FORM P-500)

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

Agreement between the City and County of San Francisco and

[insert name of contractor]

This Agreement is made this **[insert day]** day of **[insert month]**, 20 **[insert year]**, in the City and County of San Francisco, State of California, by and between: **[insert name and address of contractor]**, 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 Department of Telecommunications and Information Services ("DTIS" or "Department") wishes to **[insert short description of services required]**; and,

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

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

WHEREAS, approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number **[insert Personal Services Contract Number]** on **[insert date of Civil Service Commission action]**;

Now, THEREFORE, the parties 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 Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from **[insert beginning date]** to **[insert termination date]**.

3. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation shall be made in within thirty days of the date that the DTIS Executive Director or designee, in his or her sole discretion, approves the contractor's invoice for work performed in accordance with Section 4 above. In no event shall the amount of this Agreement exceed **[enter amount in words and (numbers)—no pennies]**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of charges," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by DTIS as being in accordance with this Agreement. 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 Agreement.

In no event shall City be liable for interest or late charges for any late payments.

[If the contract will involve the use of subcontracts, include the following language:]

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Form 7, "Prime Consultant/Joint Venture Partner(s) and Sub-consultant Participation Report." If HRC Form 7 is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Form 7 is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Form 7 is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Form 9, "Sub-Consultant Payment Affidavit," verifying that all subcontractors have been paid and specifying the amount.

6. Guaranteed Maximum Costs

a. 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.

b. 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.

c. 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.

d. 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.

7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller. All amounts paid by City to Contractor shall be subject to audit by City.

8. 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 three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. 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.

9. Disallowance

If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

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

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in

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

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

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

11. 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 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 do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel

Work under this 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 commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. 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.

14. 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 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 Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

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 Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, 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 Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. 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; 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.

[Contractors that must be State licensed as professionals to perform services, i.e., architects, engineers, certified public accountants, etc., shall provide professional liability insurance also known as errors and omissions coverage. Include the following Subsection (4) as appropriate.]

(4) Professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

(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 provide thirty days' advance written notice to City of cancellation mailed to the following address:

DTIS
Contract Administration
875 Stevenson St., 5th Floor
San Francisco, CA 94103-0948

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 do the following: (a) 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, and (b) furnish complete copies of policies promptly upon City request. 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.

[Do not insert the following language until after a waiver has been granted by the Risk Manager.]

i. Any of the terms of conditions of this Section 15 may be waived by the City's Risk Manager in writing, signed by the Risk Manager, and attached to this Agreement as Appendix C. Such waiver is fully incorporated herein. The waiver shall waive only the requirements that are expressly identified and waived, and under such terms and conditions as stated in the waiver.

16. 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 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 the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

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

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

17. 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 that City may have under applicable law.

18. Liability of City

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Liquidated Damages

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of **[insert whole dollar amount in words and numbers -- no pennies]** per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by Purchasing.

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57 or 58.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(3) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

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

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

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

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

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

(6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

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

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

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

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

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

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

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties Upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56 and 57.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this 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 Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. 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 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.

24. Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the work or services under this 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 the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. 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 shall be addressed as follows:

To City: name
 875 Stevenson St., 5th Fl.
 San Francisco, CA 94103-0948
 Fax: (415)
 E-mail: ...@sfgov.org

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

Any notice of default must be sent by registered mail.

26. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. 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 three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this 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.

30. Assignment

The services to be performed by Contractor are personal in character and neither this 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 Agreement.

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Earned Income Credit (EIC) Forms

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Disadvantaged Business Enterprise Utilization; Liquidated Damages

a. The DBE Ordinance

Contractor, shall comply with all the requirements of the Disadvantaged Business Enterprise Ordinance set forth in Chapter 14A of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "DBE 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 DBE 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 provision of the DBE 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 DBE 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 DBE Ordinance, the rules and regulations implementing the DBE Ordinance, or the provisions of this Agreement pertaining to DBE 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 Human Rights Commission or any other public official authorized to enforce the DBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the DBE 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 DBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14A.13(B).

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC 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 DBE 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 HRC or the Controller upon request.

[If the contract will involve the use of subcontracts, include subparagraphs 2., 3. and 4.:]

2. Subcontracting Goals

The DBE subcontracting participation goal for this contract is **[fill in number]** %. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in HRC Form 7 and Form 9. Failure to provide HRC Form 7 and Form 9 with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until HRC Form 7 and Form 9 is provided by Contractor.

Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the DBE Ordinance, for any purpose inconsistent with the provisions of the DBE Ordinance, its implementing rules and regulations, or this Section.

3. Subcontract Language Requirements

Contractor shall incorporate the DBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors.

Contractor shall include in all subcontracts with DBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any DBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the DBE subcontractor as specified in the bid or proposal, unless

Contractor received advance approval from the Director of HRC and Purchasing to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the DBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

4. Payment of Subcontractors

Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount.

Contractor further agrees, within ten working days following receipt of payment from the City, to file an affidavit (HRC Form 9) with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14A.13.

34. 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 §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the S.F. 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, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of 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 §12B.2(b) of the S.F. 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 HRC-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 S.F. 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, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §12B.2(h) of the S.F. 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.

35. MacBride Principles—Northern Ireland

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

36. Tropical Hardwood and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

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 Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation

Chapter 5 of the S.F. Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. 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 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 Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

In accordance with S.F. Administrative Code §67.24(e), contracts, contractors’ bids, responses to solicitations 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 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.

41. 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 S.F. Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §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.

42. 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 or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer of the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until the later of either (1) the termination of negotiations for such contract or (2) three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

43. Requiring Minimum Compensation for Covered Employees

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 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 <http://www.sfgov.org/oca/wlh.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of \$10.77 an hour beginning January 1, 2005 and for the remainder of the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of this Agreement.

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

c. Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

d. 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, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;

(3) The right to terminate this Agreement in whole or in part;

(4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(5) The right to bar Contractor from entering into future contracts with the City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

e. 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.

f. Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

h. The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

i. The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

j. 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. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. 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.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. 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 (\$50,000 for nonprofits), 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 (\$50,000 for nonprofits) in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Unless exempt, 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 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 <http://www.sfgov.org/oca/lwlh.htm>. 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(d) 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(f)(1-5). 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 keep itself informed of the current requirements of the HCAO.

h. 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.

i. 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 five business days to respond.

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

k. 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.

[If the contract amount is more than \$50,000, insert the following section. If the contract amount is equal to or less than \$50,000, §45 should read "Left Blank by Agreement of the Parties."]

45. 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

(1) Contractor will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time.

(2) Contractor will comply with requirements for providing timely, appropriate 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.

(3) Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. A Contractor may establish its good faith efforts by filling: 1) its first available Entry Level Position with a job applicant referred through the First Source Program; and, 2) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.

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

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$2,070 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.

46. 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.

47. 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.

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. **[If the contract amount is \$50,000 or more, add the following sentence:]** Contractor shall cooperate with Department to submit to the Director of HRC 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%.

49. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this 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 the Agreement.

50. Agreement Made in California; Venue

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

51. Construction

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

52. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

53. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time

54. Services Provided by Attorneys

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

55. Supervision of Minors

Contractor, and any subcontractors, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Contractor, or any subcontractor, in which he or she would have supervisory or disciplinary power over a minor under his or her care.

If Contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3).

If Contractor, or any of its subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Contractor shall comply, and cause its subcontractors to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Contractor shall provide, or cause its subcontractors to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian.

Contractor shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this section of the Agreement as a condition of its contract with the subcontractor.

Contractor acknowledges and agrees that failure by Contractor or any of its subcontractors to comply with any provision of this section of the Agreement shall constitute an Event of Default. Contractor further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Agreement, partially or in its entirety, to recover from Contractor any amounts paid under this Agreement, and to withhold any future payments to Contractor. The remedies provided in this Section shall not be limited to any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

56. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this 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.

57. Nondisclosure of Private Information

As of March 5, 2005, Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

a. Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

- (i) The disclosure is authorized by this Agreement;
- (ii) The Contractor received advance written approval from the Contracting Department to disclose the information; or
- (iii) The disclosure is required by law or judicial order.

b. Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

c. Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

d. Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

58. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

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

CITY

Recommended by:

Chris A. Vein
Acting Executive Director
Department of Telecommunications
and Information Services

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Deputy City Attorney

Approved:

Naomi Little
Director of Office of Contract Administration/
Purchaser

CONTRACTOR

[name of company]

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.

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.

[name]
[title]

City vendor number:

APPENDICES

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: Risk Manager's Waiver

Appendix A
Services to be Provided by Contractor

1. Description of Services

Contractor agrees to perform the following services:

.

2. Reports

Contractor shall submit written reports as requested by DTIS. Format for the content of such reports shall be determined by DTIS. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

3. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with DTIS will be **[insert name of contact person in department]**.

Appendix B
Calculation of Charges