

# CITY AND COUNTY OF SAN FRANCISCO

## OFFICE OF PUBLIC FINANCE



### REQUEST FOR UNDERWRITER STATEMENT OF QUALIFICATIONS

- DUE DATE:** 5:00 PM Pacific Time  
Tuesday, December 30, 2008
- CONTACT:** Anthony Ababon, Bond Associate  
City and County of San Francisco  
Office of Public Finance  
City Hall, Room 336  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
(415) 554-6902 office; (415) 554-4864 fax  
e-mail: [anthony.ababon@sfgov.org](mailto:anthony.ababon@sfgov.org)  
website: [www.sfgov.org/mopf](http://www.sfgov.org/mopf)  
RFQ Download: [mission.sfgov.org/OCABidPublication](http://mission.sfgov.org/OCABidPublication)
- SUBMISSIONS:** An electronic submission plus  
1 unbound signed original with seven bound copies, of  
its statement of qualifications to Anthony Ababon.

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# CITY AND COUNTY OF SAN FRANCISCO

## OFFICE OF PUBLIC FINANCE

### REQUEST FOR UNDERWRITER STATEMENT OF QUALIFICATIONS

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- D. Form of Commercial Paper Dealer Agreement

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# 1. Introduction and Schedule

## 1.1 General

The City and County of San Francisco (the “City”) through the Office of Public Finance seeks to establish a pool of qualified underwriters or investment banks in connection with the issuance of fixed and variable rate debt obligations and commercial paper dealers in connection with the implementation of commercial paper programs (the “Pool”). Selected firms will be placed in the Pool with other qualified parties and may be appointed to participate in the City’s future capital financings or to provide other investment banking services on an as-needed basis over the next two (2) years. Qualified underwriters and/or investment banks are expected to have expertise in the following categories of municipal debt obligations: general obligation bonds, certificates of participation, lease revenue bonds, Mello-Roos special tax bonds, tax allocation bonds, revenue bonds, tax-exempt commercial paper, and other forms of indebtedness (together, the “Bonds”).

The City will use this request for underwriter statement of qualifications (the “RFQ”) to pre-qualify firms (each, a “Firm”) that will provide underwriter, investment banking, remarketing agent, commercial paper dealer and other underwriting services to the City. **Responses will be accepted only from individual firms.** The Pool will be established for an estimated term ending on or about January 2011. The City retains the right to terminate the Pool at any time.

The City encourages responses from “Local Business Enterprises” or LBEs, as certified by the City’s Human Rights Commission (HRC), for inclusion in the Pool. Pursuant to the City’s Administrative Code Chapter 14B, the HRC will apply a rating bonus to eligible LBEs through this selection process. The City’s LBE requirements are described in Section 7. All firms that wish to be considered for inclusion in the Pool must complete the forms included in HRC Attachment 2 Requirements for Architecture, Engineering, and Professional Services Contracts in Appendix A.

In addition, the City encourages responses from “Micro-Local Business Enterprises” or Micro-LBEs as certified by the HRC pursuant to the City’s Administrative Code Chapter 14B and described in Section 1.3. Firms that meet the City’s Micro-LBE criteria will be considered for inclusion in a subgroup within the Pool through this RFQ process (the “Subgroup”). The HRC will not apply a rating bonus to firms that wish to be considered for inclusion in the Subgroup. Firms in the Subgroup will be specifically drawn upon as the opportunity permits to serve as co-manager, depending on the individual Firm’s capitalization level, credit rating, the scope of the particular transaction, and other factors as determined by the City.

This RFQ describes the required scope of services, the City’s terms and conditions, and prescribes the form and content of responses from interested firms. The City shall not be responsible for any costs incurred by firms in the preparation of responses to this RFQ. *Notwithstanding the selection of Firms for the Pool under this RFQ, the City reserves the right at its sole discretion to engage other firms at any time during the term covered by this RFQ for future financings or projects through alternative means or other requests for proposals and/or qualifications. The City's inclusion of a Firm in the Pool established under this RFQ is no guarantee of selection for work on any particular project.*

Firms within the Pool may be retained as underwriter, remarketing agent, and/or commercial paper dealer (“Underwriter”) in connection with financings on behalf of any City division or other public entity related to the City including, but not limited to, the Airport Commission, Mayor’s Office of Housing, Parking Authority, Municipal Transportation Authority, Port Commission, Public Utilities Commission, Redevelopment Agency, Housing Authority, Municipal Transportation Authority, Department of Public Health, Community College District, California Academy of Sciences, Fine Arts Museum Corporation, Treasure Island Development Authority, and the Unified School District. However, nothing contained herein is intended to prevent the City or any other public entity related to the City from issuing subsequent RFQs and/or RFPs for specific financings, or selecting Firms from the Pool for particular transactions.

**All firms are advised that required HRC forms as described in Section 7.13 and Appendix A must be returned with responses. If all required HRC forms are not included, responses may be determined to be non-responsive and may be rejected.**

**Please note that the City retains the right to conduct all long-term fixed rate refundings and new money financings on a competitive basis.**

## 1.2 Tentative Schedule

The tentative schedule for submission of qualifications is listed below. The City reserves the right to change the schedule at any time. The City will notify potential firms of any such change.

- Advertise and Distribute RFQ Monday, December 8, 2008
- Pre-proposal Conference Tuesday, December 16
- RFQ Clarification Requests Due Thursday, December 18
- City Response to Clarification Monday, December 22
- Proposals Due Tuesday, December 30
- Notify Firms Selected for Interviews Wednesday, January 14, 2009
- Firm Interviews Thursday & Friday, January 22 & 23
- Complete Evaluations Friday, January 30
- Notify Firms of Final Selection Monday, February 2

The City intends to select separate Underwriters at the time of each financing.

## 1.3 Micro-Local Business Enterprise

A Micro-Local Business Enterprise refers to a firm with average gross annual receipts in the prior three fiscal years that do not exceed \$1,250,000 and that is certified as such by the City's HRC. All firms must indicate in their statements of qualifications whether they wish to be considered for inclusion in either the Pool or the Subgroup. Firms wishing to be considered for inclusion in the Subgroup will not be eligible for rating bonuses in this process. Firms that wish to be considered for inclusion in the Subgroup must complete the forms included in HRC Attachment 5 Requirements for Micro-LBE Set Aside for Architecture, Engineering, Professional Services, and General Services Contracts in Appendix A.

#### 1.4 General Questions about RFQ

*Protest to Specifications or Requirements.* If any prospective firm objects on any ground to any specification contained in, or requirement imposed by, this RFQ, the prospective firm must file a written protest stating the specific nature and grounds of the objection(s). The prospective firm must file the protest with the Office of Public Finance **no later than five (5) business days after the issuance of the RFQ**. Any failure to file a protest in a timely manner shall constitute a waiver of any objection to such specification or requirement.

## 2. Scope of Work

Underwriting, remarketing agent and commercial paper dealer services required to be provided under and to be incorporated into the agreement to be awarded pursuant to this RFQ may include, but are not limited to, the following services.

- i. Provide advice and recommendations related to the issuance of Bonds and project specific financing programs.
- ii. Review the overall financial status of the City and recommend specific financing programs to maximize resources available for the implementation of each specific project.
- iii. Prepare reports, schedules, and documents to support the issuance of Bonds such as cash flows analysis, debt service projections, substantiation of revenue estimates, verification of cash flows, and project or market feasibility, as needed.
- iv. Assess and make recommendations relating to the appropriate level of public subsidy and equity investments, including but not limited to assessment of project feasibility and credit worthiness of each recommended form of financing.
- v. Analyze and make recommendations relating to various financing options so as to secure the lowest practical interest rate; enhance the marketability of the Bonds; achieve the widest competition for bond purchase to include retail, institutional, and other investor classes; and achieve optimal leverage of City resources, while maintaining a prudent level of risk, through debt obligations. Identify the advantages and disadvantages of any recommendations.

- vi.** Assist in the preparation of schedules and documents which may result in obtaining the lowest practical interest cost and the widest distribution of the Bonds.
- vii.** Assess and recommend any credit enhancement and/or liquidity support deemed cost effective for the transaction.
- viii.** Assist in the preparation and distribution of the preliminary and final Official Statements and other documents required to facilitate a successful bond sale and closing.
- ix.** Assist in the arrangement and preparation of presentation materials for presentations to credit rating agencies, and credit enhancement, liquidity support, and surety reserve providers.
- x.** Review leases, agreements, construction contracts, insurance provisions, covenant requirements and all relevant legal documents and issues, where appropriate, so as to provide the City with the greatest degree of flexibility compatible with sound and efficient financing procedures.
- xi.** Develop and recommend a comprehensive marketing plan to reach a broad universe of potential investors to obtain the lowest practical interest rate.
- xii.** Prior to sale, provide a comparable sales analysis and market outlook to justify proposed scale. Manage the marketing and sale of the Bonds.
- xiii.** Assist in the coordination of the bond closing.
- xiv.** Prepare a comprehensive “Final Pricing Book” within a reasonable time of the closing of each financing transaction that includes information requested by the City.
- xv.** Provide continuing updates and advice on the impact of current or proposed state or federal legislation, and market conditions that could affect the financial plans of the City and refunding opportunities.

### **3. Submission Requirements**

#### **3.1 Time & Place for Submission of Statements of Qualifications**

Qualifications should address all of the items requested below in the order stated. Brevity and clarity will be appreciated. Responses should not exceed fifteen (15) pages in length, not including a one-page cover letter and appendices. If the backs of pages are used for graphs and tables, this space will be counted in the page limitation even if the space is not paginated. **A maximum of 10 points may be deducted for page limitation violations.** Firms are forewarned that small font size, narrow page margins and uninformative boilerplate on the firm will not be helpful to reviewers in scoring the response. Information contained in appendices, if any, should be summarized in tables in the body of the proposal. Appendices not requested or sanctioned by this RFQ will not necessarily be reviewed by the selection panel.

One (1) signed, unbound original and seven (7) copies of your response must be received no later than 5:00 PM Pacific time plus one electronic copy on Tuesday, December 30, 2008. **The unbound original must include such HRC and other forms as required in Section 7, to the extent you do not already have current versions of such forms on file with the City.** Late responses will not be accepted. Responses submitted by fax will not be accepted. Responses must be addressed as follows and the original and seven (7) copies delivered to:

Underwriter RFQ  
City and County of San Francisco  
c/o Office of Public Finance  
Attention: Anthony Ababon  
City Hall, Room 336  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

### 3.2 Content

#### i. *Introductory Section (10 points) (1 page)*

- (a) This section should consist of an executive summary not exceeding one page. The introductory section should indicate the type of underwriter services the firm is seeking to provide (sole/senior manager/book runner, underwriter syndicate/co-manager, research, marketing, remarketing agent, commercial paper dealer) and briefly describe the firm's marketing and distribution capabilities. If a firm is interested in providing underwriting services on some but not all of the financings described in this RFQ, please indicate which transaction types are preferred.
- (b) Provide firm's principal place of business and location of "lead office" for this engagement.

- (c) Provide a brief description of the firm's ownership, organizational structure and capital position, including a table summarizing for the last three (3) fiscal years the firm's long-term and short-term credit ratings, if any, total capital, equity capital, net capital, excess net capital, and net income. As an attachment to your submission (does not count against page limit), please include either: a) your firm's most recent annual report; or b) your firm's most recent 10-Q.
- (d) Provide your firm's municipal underwriting limits in connection with the City, i.e. how much capital is the Firm's municipal desk authorized to commit to underwrite Bonds of the City and entities related to the City.
- (e) Provide the firm's Securities Data Corporation national long-term bond and short-term note rankings over the last three calendar years.

**ii. Staff Qualifications (30 points) (4 pages)**

In the selection process, the City will closely examine the qualifications, experience and expertise of the key individuals. Consequently, no substitution of personnel will be permitted without the City's prior written approval. Please provide the following information:

- (a) A list of all bankers and related staff who will be actively involved in providing services to the City, including their names and responsibilities. In each case, please identify the individual who will have primary responsibility and the individual who will have secondary responsibility, if any. Please specify the individual(s) who will have day-to-day responsibility for financings undertaken for the City and the individual(s) who would advise, if any. *Provide mailing address, phone and fax numbers, and e-mail address.* Summarize the project leader's background, expertise and authority to represent the firm.
- (b) A description of the experience and qualifications of these professionals including brief summaries of the dollar value and types of debt financings in which each individual has been involved over the last five years. Brief resumes of these professionals may be included as attachments to the proposal and will not count against the page limit.
- (c) Provide a description of any situation where a financing failed to close on a specified closing date after the securities were priced and describe the circumstances and the ultimate resolution.

- (d) Has the primary banker ever been removed or asked to resign from a financing? If so, please name the financing and explain the circumstances.

**iii.** *Special Firm Qualifications (20 points) (4 pages)*

Please provide a brief description of the firm's experience, including dollar value, expertise, and ability to provide services relating to the types of debt obligations listed below since January 2004.

- (a) General fund lease revenue bonds and certificates of participation
- (b) Community facilities districts (Mello Roos), Special Tax Bonds, and Special Benefit Assessment Bonds
- (c) Tax Allocation Bonds
- (d) Bond Anticipation Notes (BANs) & Grant Anticipation Notes (GANs)
- (e) Enterprise Revenue Bonds issued by a municipal utility
- (f) Unrated tax-exempt bonds
- (g) Rated but uninsured bonds
- (h) Tax-exempt commercial paper
- (i) Other

If a firm is interested in providing services on some but not all of the types of debt obligations listed above, please indicate which of the above types are preferred.

**iv.** *Firm Marketing Qualifications and Adherence to City Terms and Conditions (20 points) (2 pages)*

- (a) Describe your firm's ability to distribute the City's securities within the San Francisco Bay Area region, the State of California, and the nation.
- (b) Discuss your firm's marketing approach and distribution plan for the City's securities, including targeted investors among the full range of investor classes. What type of investor relations program would your firm recommend to maximize demand for the City's securities? Provide a case study of a similar client for whom your firm implemented a similar financing plan.

(c) The Form of Bond Purchase Agreement, Remarketing Agent Agreement and Commercial Paper Dealer Agreement are attached hereto as Appendices B-D. Any agreement entered into with a Firm as a result of this RFQ process is expected to be substantially similar to these documents, although the City reserves the right to make changes as circumstances require. Firms are requested to comment and/or identify material issues contained in the Forms of Agreements (i.e. changes that would reallocate risk between the City and the Firm). Firms should indicate their willingness to enter into the Form of Agreements in their statement of qualifications. Any exceptions to these documents must be noted in a firm's statement of qualifications.

**v. *Conflicts of Interest, Pending Litigation or Removal from Position (10 points) (1 page)***

(a) Describe any actual or potential conflicts of interest with the City, or any arrangements or relationships, formal or informal, that the firm or any of the personnel listed in the response has with any party that might interfere with the firm's ability to provide independent and objective advice and recommendations to the City in performing the Firm's role of underwriter, remarketing agent, and/or commercial paper dealer.

(b) Complete Exhibit A, and include it as an attachment to your proposal. Describe any litigation, administrative proceeding, or investigations (actual or pending, or which has occurred in the last seven years) in which the firm, or any personnel with the firm, is involved or to which it is subject, or of which the City should be aware in evaluating the firm's capacity to undertake this engagement. For purposes of this question, please list only those actions that could, if determined adversely to the firm, adversely affect the ability of the firm or such personnel to provide underwriting services to the City.

(c) Complete the Legal Disclosure Certification (Exhibit B) and include it as an attachment to your proposal.

**vi. *References (10 points) (1 page)***

Provide three references for the lead banker including the names, addresses, and telephone numbers of three or more recent clients.

**vii. *Fees (0 points) (1 page)***

The City ultimately intends to select Firms to serve as Underwriter based upon the City's assessment that such Firms will provide the best overall array of underwriting services to the City, inclusive of fee considerations. As with all professional services agreements, the City reserves the right to select an Underwriter for transactions undertaken by the City on a basis other than price. The City reserves the right to set fees on a project-by-project basis.

Please provide a separate fee estimate for underwriter, remarketing agent, and/or commercial paper dealer services on each type of financing described below for which your firm would like to be considered, both in dollars and as a percentage of par, assuming that all such Bond issuances close within six months. In each fee estimate, include an estimate of (i) your proposed management fee if selected as senior manager or as co-manager; (ii) takedowns by year; and (iii) estimated fees following additional components of the gross spread including legal fees:

- (a) \$50 million of fixed rate general fund lease revenue bond;
- (b) \$150 million issuance of fixed rate certificates of participation;
- (c) \$50 million of fixed rate special benefit assessment bonds;
- (d) \$150 million of fixed rate Mello Roos Bonds;
- (e) \$200 million enterprise revenue bond issuance by the City's Public Utilities Commission;
- (f) Remarketing fees for a \$100 million variable rate demand note program; and
- (g) Dealer fees for a \$100 million commercial paper program.

Provide an estimate of out-of-pocket expenses for work on each of the financings above. The City shall not be responsible to pay the cost of travel to and from the City, including the cost of hotel accommodations, unless such costs are specifically approved in advance and in writing by the City.

Please confirm that the fees proposed are sufficient for retail placement of the Bonds.

The City's typical practice is to compensate Firms selected for any City financing solely out of Bond proceeds. Accordingly, the fees payable to the Firm in such a situation would be contingent upon the successful closing of the transaction. Firms are required to indicate whether they will work on a contingent fee basis. Briefly describe the circumstances under which the Firm would not undertake an engagement on a contingent fee basis.

**viii.** *Designation Policy and Allocation of Liability (0 points) (1 page)*

Describe your firm's approach to designation policies and allocation of liability with respect to the financings described in Section 3.2 vii (a) – (e) above, assuming an underwriting syndicate is formed for each and the financings close within the next six (6) months.

#### **4. Evaluation Criteria and Selection Plan**

This section describes the guidelines to be used by the City in evaluating the various responses to this RFQ. In an effort to reach a decision concerning the best-qualified Firms, the City reserves the right to evaluate all factors it deems appropriate, whether or not such factors have been stated in this section.

##### **4.1 Minimum Qualifications**

Any statement of qualifications that does not demonstrate that the firm meets these minimum requirements by the deadline for submittal of statements of qualifications will be considered non-responsive and will not be eligible for award of contract.

- i.** At the time of submission of its statement of qualifications, the firm must meet applicable U.S. Securities and Exchange Commission (SEC) minimum net capital requirements for broker-dealers.
- ii.** At the time of submission of its statement of qualifications, the firm must hold all licenses and registrations required by applicable federal and state laws for businesses offering underwriting or investment banking services. All licenses and registrations must be current and in good standing with each of the following:
  - the SEC
  - the National Association of Securities Dealers (NASD);
  - the Municipal Securities Rulemaking Board (MSRB); and
  - the California Department of Corporations.
- iii.** The firm must have at least one full-time professional supervisory employee with a NASD Series 53 license (Municipal Securities Principal) and Series 7.

##### **4.2 Selection Committee**

A Selection Committee will review and score the written responses. The City may interview a short list of firms, although the City retains the option not to conduct interviews.

Written responses will be worth a maximum of 100 points and will be evaluated using the following criteria to select the Firms that best meet the needs of the City:

- i.** Introductory Section (10 points)

- ii. Firm Qualifications and Adherence to City Terms and Conditions (20 points)
- iii. Staff Qualifications (30 points)
- iv. Special Firm Qualifications (20 points)
- v. Conflicts of Interest, Pending Litigation or Removal from Position (10 points)
- vi. References (10 points)
- vii. Fees (0 points)
- viii. Designation Policy and Allocation of Liability (0 points)

#### 4.3 Scoring Procedures

Written responses will be scored by the Selection Committee and the firms seeking consideration will be ranked on the basis of their written qualifications. The HRC will verify that the firms requesting rating preferences are currently on an HRC-certified list and calculate appropriate rating bonuses. A ranking of firms will then be made based on the written response scores and those firms with the highest scores are expected to be invited to make oral presentations. The City does, however, reserve the right to elect not to conduct interviews and/or presentations. If oral presentations are conducted, scores from the written and oral phases will be aggregated.

Information about the scoring method for the oral presentations will be provided prior to the date of the interviews. All members of the proposed team must be present for the oral presentation. Interviews are expected to be held on the dates presented in Section 1.2. However, the City reserves the sole right to revise such dates and to decide not to schedule oral presentations.

**Firms must receive an aggregate score of 65 points or above to be eligible for inclusion in the Pool and the Micro-Local Business Enterprise Subgroup. The ten (10) Firms with the highest aggregate scores will be placed into the Pool. The three (3) Micro-Local Business Enterprises with the highest aggregate scores among HRC-certified Micro-Local Business Enterprises submitting qualifications will be placed into the Micro-Local Business Enterprise Subgroup.**

### 5. Pre-Proposal Conference

Firms are encouraged to participate in a pre-proposal conference to be held on Tuesday, December 16, 2008 from 2:00 to 4:00 PM Pacific Time.

The conference location and dial-in information are as follows:

Call Date:	Tuesday, December 16, 2008
Call Time:	2:00 to 4:00 PM Pacific Time
Dial-in Number:	1-800-528-3520

Participant Code: 422-8858#  
Location: City Hall, Room 278  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

If your firm plans to participate in the conference and/or conference call, please RSVP by e-mail to [anthony.ababon@sfgov.org](mailto:anthony.ababon@sfgov.org) with the participant’s name, title, firm, e-mail address, and phone number. Due to a limited number of lines available for the conference call, please try to limit to one line per office location.

## 6. Contract Award

The Office of Public Finance will select Firms to be placed into the Pool and Subgroup. The selection of any Firm shall not imply acceptance by the City of all terms of the response to this RFQ, which may be subject to further negotiations and approvals before the City may be legally bound thereby.

For each negotiated financing, the City anticipates selecting one or more Firms from the Pool and one Firm from the Subgroup to serve as Underwriter. Depending upon the ultimate decision as to the structure of the Bonds, Firms selected from the Pool may be assigned to serve as senior manager or co-manager with a senior manager, may be assigned to act as a sole manager, or may be used in such other role as may be defined by the City as the financing structure is developed. A Firm selected from the Subgroup, if any, will be assigned to serve as a co-manager.

If a satisfactory agreement cannot be negotiated, the City may, in its sole discretion, terminate negotiations with the previously selected Firm, begin contract negotiations with any other qualified Firm in the Pool and/or Subgroup, and/or reject all responses. Satisfactory contract negotiations include complying with the terms and conditions outlined in Section 7 and in the form of agreements in Appendices B-D. The City retains the option to conduct a solicitation for a new pool or pools or to add new members to the existing pool for subsequent negotiated financings.

## 7. Terms and Conditions of Receipt of Responses

### 7.1 Errors and Omissions in RFQ

Firms are responsible for reviewing all portions of this RFQ. Firms are to promptly notify the Office of Public Finance (“OPF”), in writing, if the firm discovers any ambiguity, discrepancy, omission, or other error in the RFQ. Any such notification should be directed to OPF 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 as provided below.

### 7.2 Inquiries Regarding RFQ

Inquiries regarding the RFQ and all oral notifications of an intent to request written modification or clarification of the RFQ, must be directed to:

Anthony Ababon, Office of Public Finance ..... [anthony.ababon@sfgov.org](mailto:anthony.ababon@sfgov.org)

### **7.3** Objections to RFQ Terms

Should a firm object on any ground to any provision or legal requirement set forth in this RFQ, the firm must, not more than ten calendar days after the RFQ is issued, provide written notice to OPF setting forth with specificity the grounds for the objection. The failure of a firm to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

### **7.4** Change Notices & Addenda

Any interpretation of, or change in, this RFQ will be made by addendum or by issuing change notices, which will be provided to each firm to whom the RFQ has been sent and posted on the website, and shall become a part of this RFQ and of any contract awarded. The City will not be responsible for any other explanation or interpretation.

The firm shall be responsible for ensuring that its response reflects any and all addenda and change notices issued by OPF prior to the due date regardless of when the response is submitted. Therefore, the City recommends that the firm consult the website frequently, including shortly before the due date, to determine if the firm has downloaded all change notices.

### **7.5** Term of Statement of Qualifications

Submission of a statement of qualifications signifies that the proposed services and prices are valid for 120 calendar days from the statement due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

### **7.6** Revision of Statement of Qualifications

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

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

At any time during the evaluation process, OPF may require a firm to provide oral or written clarification of its statement of qualifications. OPF reserves the right to make an award without further clarifications of statements of qualifications received.

### **7.7** Errors and Omissions in Statement of Qualifications

Failure by OPF to object to an error, omission, or deviation in the statement of qualification will in no way modify the RFQ or excuse the firm from full compliance with the specifications of the RFQ or any contract awarded pursuant to the RFQ.

### **7.8** Firm's Obligations under the Campaign Reform Ordinance

Firms must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code (“Section 1.126”), 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 Firm 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 Firm 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: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) 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:

- i.** 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.
- ii.** 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.
- iii.** 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, firms should contact the San Francisco Ethics Commission at (415) 581-2300.

## 7.9 Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFQs 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. Information provided which is covered by this paragraph will be made available to the public upon request.

## 7.10 Public Access to Meetings and Records

If a firm 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 firm must comply with Chapter 12L. The firm must include in its proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Firm's meetings and records, and (2) a summary of all complaints concerning the firm'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 firm shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in firm'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.

## 7.11 No Waiver

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

## 7.12 Local Business Enterprise Goals and Outreach.

The requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance") shall apply to this RFQ. **Responses will be accepted only from individual firms.**

### i. LBE Participation

The City strongly encourages proposals from qualified LBEs. Pursuant to Chapter 14B, the following rating bonus will be in effect for the award of this project for any firms who are certified by HRC as a LBE, or joint ventures where the joint venture partners are in the same discipline and have the specific levels of participation as identified below. Certification applications may be obtained by calling HRC at (415) 252-2500. The rating bonus applies at each phase of the selection process. The application of the rating bonus is as follows:

- A 10% bonus to an LBE; or a joint venture between or among LBEs; or
- A 5% bonus to a joint venture with LBE participation that equals or exceeds 35%, but is under 40%; or
- A 7.5% bonus to a joint venture with LBE participation that equals or exceeds 40%; or
- A 10% bonus to a certified non-profit entity.

If applying for a rating bonus as a joint venture: The LBE must be an active partner in the joint venture and perform work, manage the job and take financial risks in proportion to the required level of participation stated in the proposal, and must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the LBE joint venture's work shall be set forth in detail separately from the work to be performed by the non-LBE joint venture partner. The LBE joint venture's portion of the contract must be assigned a commercially useful function.

The LBE subconsulting goal has been waived for this RFQ.

### **7.13 HRC Forms to be Submitted with Statement of Qualifications**

- (a) Firms submitting to the Pool must include the following Human Rights Commission (HRC) Attachment 2 Forms contained in Appendix A
  - 1) HRC Form 2A Contract Participation Form,
  - 2) HRC Form 3 Non-Discrimination Affidavit, and
  - 3) HRC Form 5 Employment Form.

If these forms are not returned with the statement of qualifications, the statement may be determined to be non-responsive and may be rejected.

- (b) Firms submitting to the Micro-Local Business Enterprise Subgroup must include the following HRC Attachment 5 Forms contained in Appendix A
  - 1) HRC Form 2A Contract Participation Form,

- 2) HRC Form 3 Non-Discrimination Affidavit, and
- 3) HRC Form 5 Employment Form.

If these forms are not returned with the statement of qualifications, the statement may be determined to be non-responsive and may be rejected.

- i. Please submit only two copies of the above forms with your statement. The forms should be placed in a separate, sealed envelope labeled HRC Forms.
- ii. If you have any questions concerning the HRC Forms, you may call Bayard Fong at 415-252-2512 the Human Rights Commission Contract Compliance Officer for the Office of Public Finance. The HRC website is [www.sfgov.org/sfhumanrights](http://www.sfgov.org/sfhumanrights).

## **8. Contract Requirements**

### **8.1 Standard Contract Provisions**

The successful Firm will be required to enter into an agreement substantially in the form of the agreements attached hereto as Appendix B-D. Failure to timely execute the agreement, or to furnish any and all insurance certificates and policy endorsement, surety bonds or other materials required in the agreement, 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.

Firms are urged to pay special attention to the requirements of Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits, as set forth in the paragraphs below.

### **8.2 Nondiscrimination in Contracts and Benefits**

The successful Firm will be required to agree to comply fully with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Chapter 12C requires nondiscrimination in contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the HRC's website at [www.sfgov.org/sfhumanrights](http://www.sfgov.org/sfhumanrights).

### **8.3 Minimum Compensation Ordinance (MCO)**

The successful Firm will 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 amount of hourly gross compensation currently required under the MCO, see [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract. Additional information regarding the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco).

#### **8.4 Health Care Accountability Ordinance (HCAO)**

The successful Firm will 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 [www.sfgov.org/olse/hcao](http://www.sfgov.org/olse/hcao).

#### **8.5 First Source Hiring Program (FSHP)**

If the contract is for more than \$50,000, then the First Source Hiring Program (Admin. Code Chapter 83) may apply. 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/fsdp.htm](http://www.sfgov.org/moed/fsdp.htm) and from the First Source Hiring Administrator, (415) 401-4960.

#### **8.6 Conflicts of Interest**

The successful Firm will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The successful Firm will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the successful Firm might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful Firm that the City has selected the Firm.

### **9. Financial Responsibility**

The City accepts no financial responsibility for any costs incurred by a firm in responding to this RFQ, participating in oral presentations, or negotiating an agreement with the City. The response will become the property of the City and a matter of public record. Responses may be used by the City in any way deemed appropriate.

The City reserves the unqualified right to modify and/or suspend any and all aspects of this RFQ, to obtain further information from any Firm or person responding to this RFQ, to waive any defect as to form or content of this RFQ or any response thereto, and to reject any and all responses to this RFQ.

No person or firm responding to this RFQ shall obtain any claim or right of action against the City by reason of: any aspect of this RFQ; any defects or abnormalities contained herein; any defects or abnormalities in the selection process; the rejection of any statement of qualifications; the acceptance of any statement of qualifications; any statements, representation, acts, or omissions of the City; the exercise of any City discretion set forth in or with respect to any of the foregoing; and any and all other matters arising out of all or any of the foregoing.

### **10. Reservations of Rights by the City**

The issuance of this RFQ 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:

- (a) Waive any defect or informality in any response, proposal procedure or proposal;
- (b) Reject any or all responses;
- (c) Reissue this Request for Qualifications;
- (d) Procure any service by any other means including separate Requests for Qualifications;
- (e) Extend deadlines for accepting responses, or accept amendments to responses after expiration of deadlines;
- (f) Determine that no financing will be pursued;
- (g) Remove a Firm from the Pool and/or transaction;
- (h) Select dates other than those identified on the Tentative Schedule; and/or
- (i) Cancel the RFQ process.

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## **Exhibits**

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**EXHIBIT A**  
**Personnel Summary**

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EXHIBIT B

City and County of San Francisco

Licensing, Registration, Disciplinary Action and Litigation

LICENSING, REGISTRATION, CERTIFICATIONS

Yes

No

1. Does your firm have an active Broker-Dealer license issued by the Securities and Exchange Commission (SEC) in the name of the firm?  

\_\_\_\_\_
  
2. Is your firm required by the SEC or the National Association of Securities Dealers (NASD) to file Financial and Operational Combined Uniform Single Reports (FOCUS Reports)? If so, please provide a copy of your most recent FOCUS Report. If your firm is not required to file a FOCUS Report, please provide a copy of your firm's most recent audited financial statement.  

\_\_\_\_\_
  
3. Is your firm a current member in good standing with the NASD?  

\_\_\_\_\_
  
4. Does your firm have an active current registration as a Broker/Dealer with the State of California Department of Corporations?  

\_\_\_\_\_
  
5. Please provide each of the following:  
Firm's SEC File Number \_\_\_\_\_  
Firm's Central Registration Depository (C.R.D.) Number \_\_\_\_\_  
Identification of one employee with a NASD series 53 license:  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Office Location \_\_\_\_\_

DISCIPLINARY ACTION & LITIGATION

Yes

No

6. Within the past 24 months, has your firm or any of its current principals been the subject of an investigation by the SEC, IRS, MSRB (including, but not limited to G-37), NASD, NYSE, California Department of Corporations or any other governmental or securities industry-based regulatory agencies?  

\_\_\_\_\_

- 7(a). Within the past 24 months, has your firm or any of its principals been involved in any litigation, arbitration, disciplinary or other official actions arising from the firm’s underwriting, underwriting practices or management, or the purchase, sale or distribution of taxable or tax-exempt municipal securities or other governmental obligations (other than individual retail customer claims) of municipal securities?** \_\_\_\_\_
- 7(b). Within the past 24 months, has your firm or any of its principals been involved in any litigation, arbitration, disciplinary or other official actions arising from any other business of the firm?** \_\_\_\_\_
- 8. Has your firm ever filed for protection under federal or state bankruptcy laws?** \_\_\_\_\_
- 9. Has your firm or any of its current principals been subject to criminal action under either federal or state law?** \_\_\_\_\_

If you responded “No” to any of Questions 1-4 or if you responded “Yes” to Questions 6-9 provide an explanation. If you responded “Yes” to Questions 6 or 7, please describe the investigation or action in detail.

**(NAME OF FIRM)**  
**LEGAL DISCLOSURE CERTIFICATION**

I, (Person's name), Managing Director, certify as follows:

**I am a Managing Director of (NAME OF FIRM) (the "firm") and am authorized to execute this Certification on its behalf.**

**The firm is interested in providing underwriting services to the City and County of San Francisco and has submitted a Statement of Qualifications to the City in order to be considered for placement in a pool of firms which may provide such services.**

**In the Statement of Qualifications, the firm has responded to questions regarding Licensing, Registration, Disciplinary Action and Litigation (Exhibit B), as specified, in connection with offerings of taxable or tax-exempt municipal securities or other governmental obligations in California transactions and nationwide.**

Prior to being selected for a transaction, the firm agrees to provide updates to the Commission regarding changes to the information submitted in Exhibit A, including information about legal proceedings originating after submission of the Statement of Qualifications. I understand that if the firm fails to submit this information when requested, the firm may be suspended from the underwriter pool and would be required to request reinstatement.

I certify that I have reviewed the requirements for updating the Commission regarding legal proceedings as outlined in the Request for Statement of Qualifications, and I agree, on behalf of the firm, to fulfill the requirements outlined therein.

(FIRM'S NAME)

\_\_\_\_\_

\_\_\_\_\_

(Person's name)

\_\_\_\_\_

\_\_\_\_\_

DATE: \_\_\_\_\_

Managing Director

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## Appendices

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## Appendix A

### Human Rights Commission (HRC) 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](mailto: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 Vendor File Support in the Controller's Office at (415) 554-6702.

If a contractor would like to apply to be certified as a local business enterprise, it must submit item 4. To find out about item 4 and certification, the contractor should call Human Rights Commission at (415) 252-2500.

Item	Form Name and Internet Location	Form Number	Description	For more information
1.	Request for Taxpayer Identification Number and Certification  <a href="http://www.sfgov.org/site/oca_page.asp?id=26550">www.sfgov.org/site/oca_page.asp?id=26550</a>  <a href="http://www.irs.gov/pub/irs-pdf/fw9.pdf">www.irs.gov/pub/irs-pdf/fw9.pdf</a> (Form W-9)  <a href="http://www.irs.gov/pub/irs-pdf/iw9.pdf">www.irs.gov/pub/irs-pdf/iw9.pdf</a> (instructions for W-9)	W-9	The 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.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102  (415) 554-6702

Item	Form Name and Internet Location	Form Number	Description	For more information
2.	Business Tax Declaration  <a href="http://www.sfgov.org/site/oca_page.asp?id=26550">www.sfgov.org/site/oca_page.asp?id=26550</a>	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.	Controller’s Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102  (415) 554-6702
3.	S.F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits  <a href="http://www.sfgov.org/site/sfhumanrights_index.asp?id=4584">www.sfgov.org/site/sfhumanrights_index.asp?id=4584</a>  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. <b>(Note: Contract-by-Contract Compliance status vendors must fill out an additional form for each contract.)</b>	Human Rights Commission 25 Van Ness, Suite 800 San Francisco, CA 94102-6059  (415) 252-2500

Item	Form Name and Internet Location	Form Number	Description	For more information
4.	LBE Ordinance Compliance Declaration: <a href="http://www.sfgov.org/site/sfhumanrights_index.asp?id=45141">www.sfgov.org/site/sfhumanrights_index.asp?id=45141</a> In Vendor Profile Application	HRC Non-Discrimination Affidavit (Form 3)	The City's Local Business Enterprise and Nondiscrimination in Contracting Ordinance requires all contractors to sign this form, stating that they will abide by the Ordinance.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102  (415) 554-6702
5.	HRC Local Business Enterprise (LBE) Certification Application  <a href="http://www.sfgov.org/site/sfhumanrights_page.asp?id=45141">www.sfgov.org/site/sfhumanrights_page.asp?id=45141</a> In Vendor Profile Application		Local businesses complete this form to be certified by HRC as LBEs. Certified LBEs receive a bid bonus pursuant to Chapter 14B when bidding on City contracts. To receive the bid bonus, you must be certified by HRC by the proposal due date.	Human Rights Commission 25 Van Ness, Suite 800 San Francisco, CA 94102-6059  (415) 252-2500

**Where the forms are on the Internet**  
**Office of Contract Administration**

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

Purchasing forms: Click on "Required Vendor Forms" under the "Information for Vendors & Contractors" banner.

**Human Rights Commission**

HRC Homepage: [www.sfgov.org/site/sfhumanrights\\_index.asp](http://www.sfgov.org/site/sfhumanrights_index.asp)

Equal Benefits forms: Click on "Forms" under the "Equal Benefits" banner near the bottom.

LBE certification form: Click on "14B (LBE) Ordinance, Attachments, & Certification Forms" under the "LBE" banner near the bottom. Click on Attachment 2: HRC Requirements for Architecture, Engineering, and Professional Services Contracts.

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**Human Rights Commission Attachments:**

HRC Attachment 2 Requirements for Architecture, Engineering, and Professional Services Contracts

Click on “14B (LBE) Ordinance, Attachments, & Certification Forms” under the “LBE” banner near the bottom. Click on Attachment 2: HRC Requirements for Architecture, Engineering, and Professional Services Contracts.

1) Form 2A Contract Participation Form

2) Form 3 Non-Discrimination Affidavit

3) Form 5 Employment Form

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**FORM 2A: HRC CONTRACT PARTICIPATION FORM**

**Section 1:** This form must be submitted with the proposal or the proposal may be deemed non-responsive and rejected. Prime Proposer, each Joint Venture Partner, Subconsultants, Vendors, and lower sub tiers must be listed on this form. Only HRC certified LBEs can be used to meet the LBE subconsultant goal.

Be sure to check box for Rating Bonus. If more space is needed, attach additional copies of this form. This form is also completed and submitted for all contract modifications, which exceed the original contract amount by more than 20%.

Contract:	<b>RATING BONUS</b>		
	<input type="checkbox"/> LBE 10%	<input type="checkbox"/> Joint Venture 7.5%	
Firm:	<input type="checkbox"/> Joint Venture 5%	<input type="checkbox"/> Joint Venture 10% (LBEs ONLY)	
Contact Person:	<input type="checkbox"/> No Rating Bonus Requested		
Address:	LBE Goal      %		
City/ZIP			
Phone			

\*Type: Identify if prime (P), JV partner (J), Subconsultant (S), or Vendor (V)

TYPE *	Firm	PORTION OF WORK (describe scope(s) of work)	% OF WORK	INDICA TE LBE YES/NO	If an LBE, Identify MBE, WBE, or OBE *	% OF LBE SUBWORK
			%			%
			%			%
			%			%
			%			%
Total % of Work: 100%				Total LBE Subconsulting%		%

I declare, under penalty of perjury under the laws of the State of California, that I am utilizing the above contractors for the portions of work and amounts as reflected in the Bid Documents for this Contract.

Owner/Authorized Representative (Signature): \_\_\_\_\_ Date: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

\* MBE = Minority Business Enterprise, WBE = Women Business Enterprise, OBE = Other Business Enterprise. See HRC website ([http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS\\_1.htm](http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS_1.htm)) for each firm's status.



**Section 2. Prime Proposer, Joint Venture Partners, Subconsultant, and Vendor Information**

Provide information of each firm listed in Section 1 of this form. Firms which have previously worked on City contracts may already have a vendor number. Vendor numbers of LBE firms are located in the HRC LBE website at [www.sfgov.org/sfhumanrights](http://www.sfgov.org/sfhumanrights). Use additional sheets if necessary.

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____



**FORM 3: HRC NON-DISCRIMINATION AFFIDAVIT**

1. I will ensure that my firm complies fully with the provisions of Chapter 14B of the San Francisco Administrative Code and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
2. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the Human Rights Commission shall be payable to the City and County of San Francisco upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any contract with the City and County of San Francisco.
3. I declare and swear under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

Signature of Owner/Authorized Representative: \_\_\_\_\_  
Owner/Authorized Representative (Print) \_\_\_\_\_  
Name of Firm (Print) \_\_\_\_\_  
Title and Position \_\_\_\_\_  
Address, City, ZIP \_\_\_\_\_  
Federal Employer Identification Number (FEIN): \_\_\_\_\_  
Date: \_\_\_\_\_



**FORM 5: HRC EMPLOYMENT FORM**

This form is to be submitted with the proposal.

1. Indicate personnel designated to work on this project for the entire project team (prime proposer, joint venture partners, subconsultants, and vendors).

The employees listed should include all those listed in other sections of the proposal.

NAME OF FIRM	NAME OF EMPLOYEE	PROJECT ROLE	RACE	SEX

Indicate the Number of disadvantaged individuals that will be hired as on -the-job-trainees by the entire project team. See §4.03 of HRC Attachment 2.

a. Estimated Project Fee: \$ \_\_\_\_\_

b. HRC on-the-job training goal: \_\_\_\_\_

c. Number of on-the-job-trainees that will be hired by the project team \_\_\_\_\_

d. If less than HRC goal, explain: \_\_\_\_\_

\_\_\_\_\_

e. Length of training: \_\_\_\_\_ If less than 12 months, explain \_\_\_\_\_

\_\_\_\_\_

Sign below including each joint venture partner.  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Name and Title (Print)

\_\_\_\_\_  
Name and Title (Print)

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Telephone                      Date

\_\_\_\_\_  
Telephone                      Date

**Human Rights Commission Attachments:**

HRC Attachment 5 Requirements for Micro-LBE Set Aside for Architecture, Engineering, Professional Services, and General Services Contracts

Click on “14B (LBE) Ordinance, Attachments, & Certification Forms” under the “LBE” banner near the bottom. Click on “Attachment 5: HRC Requirements for Micro-LBE Set Aside for Architecture, Engineering, and Professional Services, and General Services Contracts”.

1) Form 2A Contract Participation Form

2) Form 3 Non-Discrimination Affidavit

3) Form 5 Employment Form

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**FORM 2A: HRC CONTRACT PARTICIPATION FORM**

Section 1: This form must be submitted with the proposal or the proposal may be deemed non-responsive and rejected. Prime Proposer, each Joint Venture Partner, Subconsultants, Vendors, and lower sub tiers must be listed on this form. The Micro-LBE Prime must perform 50% of the work.

Contract:			
Firm:			
Contact Person:			
Address:		<input type="checkbox"/> Check if you are a Certified Micro-LBE <input type="checkbox"/> Minority-owned = MBE <input type="checkbox"/> Woman- owned = WBE <input type="checkbox"/> Other Business-owned = OBE	
City/ZIP			
Phone			

\*Type: Identify if Prime (P), Subconsultant (S), or Vendor (V)

TYPE *	Prime, Subconsultant, Vendor	PORTION OF WORK (describe scope(s) of work)	INDICATE MICRO-LBE OR SMALL LBE	*If an LBE Identify MBE, WBE, or OBE	% OF WORK
					%
					%
					%
					%
					%
					%
					%
<b>Total Contract Amount</b>					<b>100%</b>

I declare, under penalty of perjury under the laws of the State of California, that I am utilizing the above contractors for the portions of work and amounts as reflected in the Bid Documents for this Contract.

Owner/Authorized Representative (Signature): \_\_\_\_\_ Date: \_\_\_\_\_  
 Print Name and Title: \_\_\_\_\_ Title: \_\_\_\_\_

\*MBE=Minority Business Enterprise, WBE=Women Business Enterprise, OBE=Other Business Enterprise. See HRC website ([http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS\\_1.htm](http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS_1.htm)) for each firm's status.



**Section 2. Prime Proposer, Subconsultant, and Vendor Information**

Provide information of each firm listed in Section 1 of this form. Firms which have previously worked on City contracts may already have a vendor number. Vendor numbers of LBE firms are located in the HRC LBE website at [www.sfgov.org/sfhumanrights](http://www.sfgov.org/sfhumanrights). Use additional sheets if necessary.

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____



**FORM 3: HRC NON-DISCRIMINATION AFFIDAVIT**

1. I will ensure that my firm complies fully with the provisions of Chapter 14B and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
2. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the Human Rights Commission shall be payable to the City and County of San Francisco upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any contract with the City and County of San Francisco.
3. I declare and swear under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

Signature of Owner/Authorized Representative: \_\_\_\_\_

Owner/Authorized Representative (Print) \_\_\_\_\_

Name of Firm (Print) \_\_\_\_\_

Title and Position \_\_\_\_\_

Address, City, ZIP \_\_\_\_\_

Federal Employer Identification Number (FEIN): \_\_\_\_\_

Date: \_\_\_\_\_



**FORM 5: HRC EMPLOYMENT FORM**

This form is submitted with the proposal.

1. Indicate personnel designated to work on this project for the entire project team (prime proposers, joint venture partners, subconsultants, and vendors).

The employees listed should include all those listed in other sections of the proposal.

NAME OF FIRM	NAME OF EMPLOYEE	PROJECT ROLE	RACE <sup>1</sup>	SEX

Prime must sign below including each joint venture partner.

---

Owner/Authorized Representative (Signature)	Owner/Authorized Representative (Signature)
Name and Title (Print)	Name and Title (Print)
Firm Name	Firm Name
Telephone                      Date	Telephone                      Date

1. Indicate which of the following: American Indian/Alaskan Native, Asian/Pacific Islander, Black, Filipino, Latino, White, or Other.

**Appendix B: Form of Bond Purchase Agreement**

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CITY AND COUNTY OF SAN FRANCISCO

\_\_\_\_\_  
(\_\_\_\_\_)

**PURCHASE CONTRACT**

\_\_\_\_\_, 20\_\_

City and County of San Francisco  
Office of Public Finance  
City Hall, Room 336  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102  
Attention: Nadia Sesay, Director

Ladies and Gentlemen:

The undersigned, \_\_\_\_\_ (the “Representative”), acting on behalf of itself and the other underwriters listed on the signature page hereof (together with the Representative, the “Underwriters”), hereby offers to enter into this Purchase Contract (the “Purchase Contract”) with the City and County of San Francisco (the “City”). The offer made hereby is subject to acceptance by the City by execution and delivery of this Purchase Contract to the Representative at or prior to 11:59 p.m., California time, on the date first above written, and if not so accepted will be subject to withdrawal by the Representative upon notice delivered to the City at any time prior to the acceptance hereof by the City. Upon acceptance of this offer by the City in accordance with the terms hereof, this Purchase Contract will be binding upon the City and the Underwriter. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Official Statement or the Trust Agreement (each as hereinafter defined).

The Representative represents and warrants to the City that it has been duly authorized to enter into this Purchase Contract and to act hereunder by and on behalf of the other Underwriters. Any authority, discretion or other power conferred upon the Underwriters by this Purchase Contract may be exercised jointly by all of the Underwriters or by the Representative on their behalf.

1. Purchase and Sale. Upon the terms and conditions and upon the basis of the representations, covenants and agreements hereinafter set forth, the Underwriters hereby jointly and severally agree to purchase from the City, and the City hereby agrees to sell to the Underwriters, all (but not less than all) of the \$\_\_\_\_\_ aggregate principal amount of its City and County of San Francisco \_\_\_\_\_ Bonds, Series \_\_\_\_\_ (\_\_\_\_\_) (the “Bonds”). The purchase price for the Bonds shall be an aggregate of \$\_\_\_\_\_ (which

represents the aggregate principal amount of the Bonds, [plus] a net aggregate original issue [premium] in the amount of \$\_\_\_\_\_, less an aggregate underwriters' discount in the amount of \$\_\_\_\_\_).

2. The Bonds. The Bonds are being issued pursuant to and in accordance with (a) Resolution No. \_\_\_\_\_, adopted by the Board of Supervisors of the City on \_\_\_\_\_, 2008 (the "Resolution"), (b) a Master Trust Agreement, dated as of \_\_\_\_\_ (the "Trust Agreement"), between the City and \_\_\_\_\_, as trustee thereunder, (c) the City's \_\_\_\_\_, (d) Section \_\_\_\_\_ of the City Charter and (e) the Constitution and laws of the State of California. The transactions on the City's part in connection with the Bonds have been authorized pursuant to \_\_\_\_\_ and (y) Ordinance No. \_\_\_\_\_, passed by its Board of Supervisors on \_\_\_\_\_, 2008 and signed by its Mayor on \_\_\_\_\_, 2008 (the "Ordinance").

The Bonds shall be dated the Closing Date, shall bear interest payable semiannually each \_\_\_\_\_ 1 and \_\_\_\_\_ 1, commencing \_\_\_\_\_ 1, 20\_\_, until maturity or earlier redemption, at the rates, and shall mature on \_\_\_\_\_ 1 in each year, subject to earlier redemption, in the amounts, as set forth in the attached Appendix.

The Bonds are being issued to finance \_\_\_\_\_ of the City, as described in the Official Statement.

In order to provide for payment of the Bonds, the City will lease a portion of \_\_\_\_\_ (the "Facilities") to \_\_\_\_\_ pursuant to a Facilities Lease, dated as of \_\_\_\_\_, 20\_\_ (the "Facilities Lease"), between the City and \_\_\_\_\_, and the \_\_\_\_\_ will lease the Facilities back to the City pursuant to a Master Lease, dated as of \_\_\_\_\_, 20\_\_ (the "Lease"), between the City and \_\_\_\_\_. The Bonds will be payable from and secured by base rental payments to be made by the City under the Lease. The \_\_\_\_\_ has assigned its rights to receive such base rental payments to the Trustee pursuant to an Assignment Agreement, dated as of \_\_\_\_\_, 20\_\_ (the "Assignment Agreement"), between the \_\_\_\_\_ and the Trustee.

The Bonds will also be secured by the Reserve Fund established under the Trust Agreement. On the Closing Date an amount of cash an/or Credit Facilities not less than the Reserve Fund Requirement will be held in the Reserve Fund.

[Principal and interest payments on the Bonds will be insured by a municipal bond insurance policy issued by \_\_\_\_\_ ("Insurer").]

Interest on the Bonds will be excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and will be exempt from State of California personal income taxes, all as further described in the Official Statement, dated the date hereof, and relating to the Bonds (as amended and supplemented, the "Official Statement").

The Trust Agreement, the Facilities Lease, the Master Lease, the Assignment Agreement, the Continuing Disclosure Certificate and this Purchase Contract are collectively

referred to herein as the “Financing Documents.” The Financing Documents to which the City is a party are collectively referred to herein as the “City Documents.”

3. Official Statement. The City ratifies, approves and confirms the distribution of the Preliminary Official Statement with respect to the Bonds, dated \_\_\_\_\_ (together with the appendices thereto, any documents incorporated therein by reference, and any supplements or amendments thereto, the “Preliminary Official Statement”), in connection with the offering and sale of the Bonds by the Underwriters prior to the availability of the Official Statement. The City represents that the Preliminary Official Statement was deemed final as of its date for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Corporation under the Securities Exchange Act of 1934, as amended (“Rule 15c2-12”), except for the omission of offering prices, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, delivery date, ratings and other terms of the Bonds depending on such matters. The City shall provide the Underwriters, within seven (7) business days from the date hereof (but in any event at least two (2) business days prior to the Closing Date) with a reasonable number of copies of the Official Statement in the form of the Preliminary Official Statement with such changes thereto as have been approved by the Representative (which approval shall not be unreasonably withheld), as requested by the Representative, for distribution. The City authorizes and approves the distribution by the Underwriters of the Official Statement in connection with the offering and sale of the Bonds. The City authorizes the Representative to file, and the Representative hereby agrees to file, the Official Statement with (i) at least one of the nationally recognized municipal securities information repositories designated by the SEC (a “NRMSIR”) and (ii) the MSRB, or its designee. The Official Statement, including the appendices thereto, any documents incorporated therein by reference, and any supplements or amendments thereto on or prior to the Closing Date is herein referred to as the “Official Statement.”

4. Representations, Covenants and Agreements of the City. The City represents and covenants and agrees with each of the Underwriters that as of the date hereof:

(a) The City has full legal right, power and authority to enter into the City Documents, to enact the Ordinance, and to observe, perform and consummate the covenants, agreements and transactions contemplated by the City Documents, the Ordinance and the Official Statement; by all necessary official action of the City, the City has duly enacted the Ordinance prior to or concurrently with the acceptance hereof and has approved the Preliminary Official Statement and the Official Statement; the Ordinance is in full force and effect and has not been amended, modified, rescinded or challenged by referendum; the City has duly authorized and approved the execution and delivery of, and the performance by the City of its obligations contained in, the Ordinance and the City Documents; the City has duly authorized and approved the execution and delivery of the Official Statement; and the City is in compliance in all material respects with the obligations in connection with the issuance of the Bonds on its part contained in the Ordinance and the Financing Documents.

(b) As of the date thereof, the Preliminary Official Statement (except for information regarding The Depository Trust Company (“DTC”) and its book-entry only system [and the Insurer and its municipal bond insurance policy]) did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(c) From the date of delivery of the Official Statement (as hereinafter defined) up to and including the end of the underwriting period (as such term is defined in Rule 15c2-12), the Official Statement (except for information regarding DTC and its book-entry only system [and the Insurer and its municipal bond insurance policy]) does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. For purposes of this Purchase Contract, the end of the underwriting period shall be deemed to be the Closing Date, unless the Underwriters shall have notified the City to the contrary on or prior to such date.

(d) If the Official Statement is supplemented or amended pursuant to Section 4(e), at the time of each supplement or amendment thereto and at all times subsequent thereto up to and including the Closing Date or the end of the underwriting period, as the case may be, the Official Statement as so supplemented or amended (except for information regarding DTC and its book-entry only system [and the Insurer and its municipal bond insurance policy]) will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(e) If between the date of delivery of the Official Statement and the end of the underwriting period (i) any event shall occur or any fact or condition shall become known to the City that might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, the City shall notify the Representative thereof, and (ii) in the reasonable opinion of the City or the Representative such event, fact or condition requires the preparation and publication of a supplement or amendment to the Official Statement, the City will at its expense supplement or amend the Official Statement in a form and in a manner approved by the Representative, which approval shall not be unreasonably withheld.

(f) The City has full legal right, power and authority to enter into the Financing Documents for the purposes described in the Ordinance and the Official Statement.

(g) The City is not in material violation of, or in material breach of or in material default under, any applicable constitutional provision, charter provision, law or administrative regulation or order of the State or the United States of America or

any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, or other agreement or instrument to which the City is a party or to which the City or any of its properties is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a material default or event of default under any such instrument; and the execution and delivery of the City Documents and the Official Statement, the enactment of the Ordinance and compliance with the provisions of the City Documents and the Ordinance will not conflict with or constitute a material breach of or material default under any constitutional provision, charter provision, law, administrative regulation, order, judgment, court decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is subject, or by which it or any of its properties is bound, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of its properties or under the terms of any such law, regulation or instrument, except as permitted by the City Documents.

(h) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending, with service of process having been accomplished, or to the best knowledge of the City after due inquiry, threatened by a prospective party or their counsel in writing addressed to the City, (i) in any way questioning the corporate existence of the City or the titles of the officers of the City to their respective offices; (ii) in any way contesting, affecting or seeking to prohibit, restrain or enjoin the issuance or delivery of any of the Bonds, or the collection of revenues pledged to pay the principal of and interest on the Bonds, or the pledge of such revenues, or the application of the proceeds of the Bonds; (iii) in any way contesting or affecting the validity of the Bonds, the Ordinance, the City Documents or the tax-exempt status of the interest on the Bonds, or contesting the powers of the City or any authority for the issuance of the Bonds, the enactment of the Ordinance or the execution and delivery by the City of the City Documents or the Official Statement; (iv) which would likely result in any material adverse change relating to the business, operations or financial condition of the City or the City's ability to satisfy its payment obligations with respect to the Bonds; or (v) contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or asserting that the Preliminary Official Statement or the Official Statement contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(i) The City will furnish such information, execute such instruments and take such other action not inconsistent with law or established policy of the City in cooperation with the Representative as may be reasonably requested (i) to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States of America as may be designated by the Representative, and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions; provided, that the

City shall not be required to execute a general or special consent to service of process or qualify to do business in connection with any such qualification or determination in any jurisdiction.

(j) The City Documents conform in all material respects to the descriptions thereof contained in the Official Statement.

(k) The City Documents when executed or adopted by the City, will be legal, valid and binding obligations of the City enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium, other laws affecting creditors rights generally, and to limitations on remedies against cities and counties under California law.

(l) All material authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, court, agency or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the City of, its respective obligations under City Documents have been duly obtained or when required for future performance are expected to be obtained, except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any state in connection with the offering and sale of the Bonds.

(m) The financial statements of the City for the fiscal year ended June 30, [2006 and 2007] set forth as an Appendix to the Official Statement fairly present the financial position of the City as of the dates indicated and the results of its operations, the sources and uses of its cash and the changes in its fund balances for the periods therein specified to the extent included therein and, other than as set forth in the Official Statement, were prepared in conformity with generally accepted accounting principles applied on a consistent basis.

(n) The City has never defaulted in the payment of principal of or interest on any of its bonds or financing leases.

(o) The City will undertake, pursuant to the Trust Agreement and a Continuing Disclosure Certificate (the "Continuing Disclosure Certificate"), to provide certain annual financial information and notices of the occurrence of certain events, if material, pursuant to paragraph (b)(5) of Rule 15c2-12. An accurate description of this undertaking is set forth in the Preliminary Official Statement and will also be set forth in the Official Statement. If between the date hereof and the Closing Date there shall have been a change in paragraph (b)(5) of Rule 15c2-12 which establishes requirements on obligated persons, such as the City, more stringent than those in effect on the date hereof as a condition of the Underwriters not being prohibited from purchasing or selling the Bonds (the "Modified Rule"), the City agrees to modify the Continuing Disclosure Certificate to the end that such certificate will satisfy the requirements of the Modified Rule as in effect on the Closing Date.

The City has been and is in compliance with its continuing disclosure obligations under Rule 15c2-12.

(p) Between the date hereof and the Closing Date, the City will not supplement or amend the City Documents, the Ordinance or the Official Statement in any respect that is material to the obligations of the City under this Purchase Contract without the prior written consent of the Representative, which consent shall not be unreasonably withheld.

5. Representations, Covenants and Agreements of the Underwriters. Each of the Underwriters represents and covenants and agrees with the City that:

(a) The Representative has been duly authorized to enter into this Purchase Contract and to act hereunder by and on behalf of the Underwriters.

(b) It shall comply with the San Francisco Business Tax Ordinance and shall, if not otherwise exempt from such ordinance, provide to the City a Business Tax Registration Certificate on or prior to the date hereof.

(c) It shall comply with Chapter 12B of the San Francisco Administrative Code, entitled "Nondiscrimination in Contracts," which is incorporated herein by this reference.

6. Offering. It shall be a condition to the City's obligations to sell and to deliver the Bonds to the Underwriters and to the Underwriters' obligations to purchase and to accept delivery of the Bonds that the entire \$\_\_\_\_\_ principal amount of the Bonds shall be issued, sold and delivered by the City and purchased, accepted and paid for by the Underwriters at the Closing. On or prior to the Closing, the Representative will provide the City with information regarding the reoffering prices and yields on the Bonds, in such form as the City may reasonably request.

The Underwriters agree to make a bona fide public offering of all the Bonds, at prices not in excess of the initial public offering prices as set forth in the Official Statement. Each of the Underwriters will provide, consistent with the requirements of Municipal Securities Rulemaking Board Rule G-32, for the delivery of a copy of the Official Statement to each customer who purchases a Bond during the underwriting period. Each of the Underwriters further agree that it will comply with applicable laws and regulations, including without limitation Rule 15c2-12, in connection with the offering and sale of the Bonds.

7. Closing. At 8:30 a.m., California time, on \_\_\_\_\_, 20\_\_, or at such other time as shall have been mutually agreed upon by the City and the Representative (the "Closing Date"), the City will deliver or cause to be delivered to the account of the Representative (through DTC or FAST) the Bonds duly executed by the City, together with the other certificates, opinions and documents set forth in Section 8(d); and the Representative will accept such delivery (through DTC or FAST) and pay by wire transfer the purchase price of the Bonds set forth in Section 1. [Payment by the Underwriters of the premium for the municipal bond insurance policies described in Section 1 on behalf of the City shall constitute payment of a like portion of said purchase price.]

Payment for the delivery of the Bonds shall be coordinated at the offices of \_\_\_\_\_ in San Francisco, California, or at such other place as shall have been mutually agreed upon by the City and the Underwriters. Such payment and delivery is called the "Closing." The Representative shall order CUSIP identification numbers and the City shall cause such CUSIP identification numbers to be printed on the Bonds, but neither the failure to print any such number on any Bond nor any error with respect thereto shall constitute cause for failure or refusal by the Representative to accept delivery of and pay for the Bonds in accordance with the terms of this Purchase Contract. The Bonds will be delivered to DTC via FAST, will be in printed, lithographed or typewritten form, will be prepared and delivered in registered form and will be registered in the name of Cede & Co., as nominee of DTC. The Bonds will be made available to the Representative for checking not less than two (2) business days prior to the Closing.

Immediately upon completion of the Closing, the City shall return to an authorized representative of Representative, the uncashed Good Faith Deposit check delivered to the City pursuant to Section 10 hereof.

8. Conditions to Closing. The obligations of the Underwriters hereunder shall be subject to the performance by the City of their respective obligations hereunder at or prior to the Closing and are also subject to the conditions set forth in paragraphs (a) through (d) of this Section. If on the Closing Date the City fails to deliver any of the certificates, documents or opinions required to be delivered by it, as set forth in paragraph (d) of this Section, or is otherwise unable to satisfy the conditions to the obligations of the Underwriters hereunder, this Purchase Contract shall terminate at the option of the Representative, and no party shall have any further obligations hereunder.

(a) The representations of the City contained herein shall be true, complete and correct in all material respects on and as of the Closing Date as if made on the Closing Date.

(b) On the Closing Date (i) the Financing Documents shall be in full force and effect, and shall not have been amended, modified or supplemented since the date hereof in any respect that is material to the obligations of the City under this Purchase Contract, without the prior written consent of the Representative (which consent shall not be unreasonably withheld) and no default or event of default has occurred and is continuing under any Financing Document; and (ii) the City shall each perform or have performed its obligations required under or specified in the Financing Documents to be performed at or prior to the Closing.

(c) On the Closing Date, all official action of the City relating to the Official Statement, the Bonds and the Financing Documents shall be in full force and effect in accordance with their respective terms, and such documents shall not have been amended, modified or supplemented in any material respect from the date hereof except as shall have been approved in writing by the Representative, which approval shall not be unreasonably withheld.

(d) On or prior to the Closing Date, the Underwriters shall receive the following documents, in each case satisfactory in form and substance to the Representative and to \_\_\_\_\_, Underwriters' Counsel ("Underwriters' Counsel"):

(i) A certificate of the City, dated the Closing Date, executed by an authorized officer, to the effect that, other than as set forth in the Official Statement, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, is pending or to the best of his or her knowledge after due inquiry, threatened by a prospective party or their counsel, (A) in any way questioning the existence of the City or titles of the officers of the City to their respective offices; (B) in any way contesting, affecting or seeking to prohibit, restrain or enjoin the issuance or delivery of any of the Bonds, or the collection of revenues pledged or to be pledged to pay the principal of and interest on the Bonds or the pledge of such revenues, or the application of the proceeds of sale of the Bonds; (C) in any way contesting or affecting the validity of the Bonds, the Financing Documents or the tax-exempt status of the interest on the Bonds, or contesting the powers of the City or any authority for the issuance of the Bonds or the adoption of Resolution, or the execution and delivery by the City of any Financing Document; (D) which would likely result in any material adverse change to the City's ability to pay the Bonds; or (E) contesting the completeness or accuracy of the Official Statement, or asserting that the Official Statement contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, and there is no basis for any such action, suit, proceeding, inquiry or investigation;

(ii) A certificate of the City, dated the Closing Date, executed by an authorized officer, to the effect that, other than as set forth in the Official Statement, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, is pending or to the best of his or her knowledge after due inquiry, threatened by a prospective party or their counsel, (A) in any way questioning the existence of the City or titles of the officers of the City to their respective offices; (B) in any way contesting, affecting or seeking to prohibit, restrain or enjoin the issuance or delivery of any of the Bonds, or the collection of revenues pledged or to be pledged to pay the principal of and interest on the Bonds or the pledge of such revenues, or the application of the proceeds of sale of the Bonds; (C) in any way contesting or affecting the validity of the Bonds, the Financing Documents or the tax-exempt status of the interest on the Bonds, or contesting the powers of the City or any authority for the enactment of the Ordinance or the execution and delivery by the City of any City Document; (D) which would likely result in any material adverse change to the City's ability to pay rental under the Lease; or (E) contesting the completeness or accuracy of the Official Statement, or asserting that the Official Statement contained any

untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, and there is no basis for any such action, suit, proceeding, inquiry or investigation;

(iii) Two copies of the Official Statement, signed by an authorized officer of the City and an authorized officer of the City;

(iv) A DTC Blanket Letter of Representations, executed by the City and accepted by DTC;

(v) The opinions of \_\_\_\_\_ and \_\_\_\_\_ Co-Bond Counsel to the City, each dated the Closing Date, each substantially in the form set forth as Appendix G to the Official Statement, together with a letter to the Underwriters from each such Co-Bond Counsel stating that the Underwriters may rely on the same;

(vi) The opinions of \_\_\_\_\_ and \_\_\_\_\_, Co-Bond Counsel to the City, each dated the Closing Date and addressed to the Underwriters, each substantially in the form attached hereto as Appendix ;

(vii) The opinion of \_\_\_\_\_, Disclosure Counsel to the City, dated the Closing Date and addressed to the City and the Underwriters, substantially in the form attached hereto as Appendix ;

(viii) The opinion of Underwriters' Counsel, dated the Closing Date and addressed to the Underwriters, to the effect that (A) the Bonds are not required to be registered under the Securities Act of 1933, as amended, (B) the Trust Agreement need not be qualified under the Trust Indenture Act of 1939, as amended, (C) the undertaking of the City pursuant to the Trust Agreement to provide continuing disclosure with respect to the Bonds satisfies the requirements of paragraph (b)(5) of Rule 15c2-12, and (D) while such counsel is not passing upon, and does not assume any responsibility for, the accuracy, completeness or fairness of any of the statements contained in the Official Statement, based upon such counsel's participation in conferences during which the contents of the Official Statement were discussed, no information came to such counsel's attention which caused such counsel to believe that the Official Statement (except for any financial or statistical data or forecasts, numbers, information regarding DTC and its book-entry only system, [the Insurer and its municipal bond insurance policy, ] and except for the Appendices thereto, as to which no view need be expressed) contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading; provided, that such opinion and representation may not be relied upon or otherwise used by any other person without the express written consent of such counsel;

(ix) The opinion of the City Attorney, dated the Closing Date and addressed to the City, [the Insurer] and the Underwriters, substantially in the form attached hereto as Appendix ;

(x) The opinion of \_\_\_\_\_, counsel to the City, substantially in the form attached hereto as Appendix ;

(xi) A certificate of the City, dated the Closing Date, executed by an authorized officer reasonably acceptable to the Representative, to the effect that on the date thereof (A) the descriptions and statements of or pertaining to the City contained in the Official Statement were and are true and correct in all material respects; (B) the representations of the City contained in this Purchase Contract were and are true and correct in all material respects, and the City has complied with all agreements and covenants and satisfied all conditions contemplated by this Purchase Contract, the Resolution and the Financing Documents on its part to be performed or satisfied at or prior to the Closing Date; (C) insofar as the City, and its affairs, including its financial affairs, are concerned, the Official Statement did not and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading; and (D) insofar as the descriptions, statements and data, including financial data, of or pertaining to entities other than the City and the activities of such entities contained in the Official Statement are concerned, such descriptions, statements and data have been obtained from sources which the City believes to be reliable, and the City has no reason to believe that they contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(xii) A certificate of the City, dated the Closing Date, executed by an authorized officer reasonably acceptable to the Representative, to the effect that on the date thereof (A) the descriptions and statements of or pertaining to the City contained in the Official Statement were and are true and correct in all material respects; (B) the representations of the City contained in this Purchase Contract were and are true and correct in all material respects, and the City has complied with all agreements and covenants and satisfied all conditions contemplated by this Purchase Contract, the Ordinance and the City Documents on its part to be performed or satisfied at or prior to the Closing Date; (C) insofar as the City, and its affairs, including its financial affairs, are concerned, the Official Statement did not and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading; and (D) insofar as the descriptions, statements and data, including financial data, of or pertaining to entities other than the City and the activities of such entities contained in the Official Statement are concerned, such descriptions, statements and data have

been obtained from sources which the City believes to be reliable, and the City has no reason to believe that they contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(xiii) Executed copies of each of the Financing Documents, with such changes or amendments as may have been approved in writing by the Representative, which approval shall not be unreasonably withheld;

(xiv) A copy of the Resolution requesting the approval of the Bonds, certified by the Secretary of the Library Commission of the City as having been duly executed or adopted by said Library Commission and as being in full force and effect, with such changes or amendments as may have been approved in writing by the Representative, which approval shall not be unreasonably withheld;

(xv) A copy of the Ordinance, certified by the Clerk of the Board of Supervisors of the City as having been duly enacted by the Board of Supervisors of the City and as being in full force and effect, with such changes or amendments as may have been approved in writing by the Representative, which approval shall not be unreasonably withheld;

(xvi) A copy of the Resolution of the Board of Supervisors of the City approving the issuance, sale and delivery of the Bonds, certified by the Clerk of the Board of Supervisors as having been duly enacted by the Board of Supervisors of the City and as being in full force and effect, with such changes or amendments as may have been approved in writing by the Representative, which approval shall not be unreasonably withheld;

[(xvii) A copy of the municipal bond insurance policy issued by the Insurer, an opinion of counsel to the Insurer, addressed to the City and the Underwriters, in form satisfactory to the City and the Representative, and a certificate of the Insurer to the effect that the information in the Official Statement regarding such Insurer and its municipal bond insurance policy did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;]

(xviii) Evidence satisfactory to the Representative that Moody's Investors Service, Standard & Poor's Ratings Services and Fitch, Inc. have assigned ratings of "\_\_\_\_," "\_\_\_\_" and "\_\_\_\_," respectively, to the Bonds [based in part on the long-term ratings of such Insurer, and underlying ratings of "A1," "A" and "A," respectively, to the Bonds];

(xix) The Continuing Disclosure Certificate duly executed by the City;

(xx) A certificate of the Trustee, in form satisfactory to Co-Bond Counsel;

(xxi) The opinion of counsel to the Trustee, dated the Closing Date and addressed to the City, in form satisfactory to Co-Bond Counsel; and

(xxii) Such additional legal opinions, certificates, instruments and other documents as the Representative may reasonably deem necessary to evidence the truth and accuracy as of the Closing Date of the representations of the City contained in this Purchase Contract and the due performance or satisfaction by the City at or prior to such time of all covenants and agreements then to be performed and all conditions then to be satisfied by the City pursuant to this Purchase Contract.

9. Termination. The Underwriters may terminate this Purchase Contract, without liability therefor, by notification by the Representative to the City if at any time subsequent to the date of this Purchase Contract and at or prior to the Closing Date any of the following shall have occurred and be continuing as of the date of termination:

(a) There shall occur or become known any change, or any development involving a prospective change, in or affecting the business, properties or financial condition of the City which, in the reasonable opinion of the Representative, materially impairs the investment quality, the marketability or the market price of the Bonds;

(b) Legislation shall have been enacted by the Congress of the United States, or passed by either House of the Congress, or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to either House of the Congress of the United States by any committee of either House to which such legislation has been referred for consideration, or a decision shall have been rendered by a court of the United States, or the United States Tax Court, or an order, ruling, regulation (final, temporary or proposed) or official statement shall have been made by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency of appropriate jurisdiction, the effect of which would be to cause interest on the Bonds or on securities of the general character of the Bonds to cease to be excludable in gross income for federal income tax purposes or to be exempt from State of California personal income taxes, and which in the reasonable opinion of the Representative would materially and adversely affect the marketability or the market price of the Bonds; provided, that for purposes of the preceding sentence, interest will be treated as excludable from gross income for federal income tax purposes whether or not it is includable as an item of tax preference for calculating alternative minimum taxes or is otherwise includable for the purpose of calculating certain other tax liabilities;

(c) Legislation shall be enacted, or a decision of a court of the United States shall be rendered or any action shall be taken by, or on behalf of, the Securities and Exchange Corporation or any other governmental agency having jurisdiction over

the subject matter which has the effect of requiring the contemplated distribution of the Bonds to be registered under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or the Trust Agreement to be qualified under the Trust Indenture Act of 1939, as amended, and which in the reasonable opinion of the Representative would materially and adversely affect the marketability or the market price of the Bonds from the initial offering prices set forth in the Official Statement;

(d) There shall have occurred a declaration of war by the United States, any outbreak of hostilities, or any escalation of existing hostilities, an act of terrorism, or any other national or international calamity or crisis, the effect of such outbreak, escalation, act, calamity or crisis being such as, in the reasonable opinion of the Representative, would materially and adversely affect the marketability or the market price of the Bonds;

(e) Any rating of bonds, notes or other direct or indirect obligations of the City (including, without limitation, the Bonds) shall have been downgraded, suspended or withdrawn, or the possibility of such a downgrading, suspension or withdrawal shall have been publicly announced, by Moody's Investors Service, Standard & Poor's Ratings Services or Fitch Inc. and such action, in the reasonable opinion of the Representative, would materially and adversely affect the marketability or the market price of the Bonds;

(f) An event, fact or condition shall have occurred or become known which, in the reasonable opinion of the Representative, would materially and adversely affect the marketability or market price of the Bonds;

(g) Any legislation, ordinance, rule or regulation shall be introduced in or enacted by any governmental body, board, department or agency of the State of California or the United States, or a decision by any court of competent jurisdiction within the State of California or any court of the United States shall be rendered, affecting the City, which, in the reasonable opinion of the Representative, will materially adversely affect the marketability or the market price of the Bonds;

(h) The New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the Bonds or obligations of the general character of the Bonds, any material restrictions not now in force or being enforced, or increase materially those now in force, with respect to the extension of credit by, or the charges to the net capital requirements of, underwriters;

(i) There shall be in effect a general suspension of trading or other material restrictions on the New York Stock Exchange or other national securities exchange not in effect as of the date hereof;

(j) There shall have occurred the declaration of a general banking moratorium by any authority of the United States or the State of New York or the State of California; or

(k) There shall be (i) any change in or addition to applicable federal or state law, whether statutory or as interpreted by the courts or by federal or state agencies, including any changes in or new rules, regulations or other pronouncements or interpretations by federal or state agencies, (ii) any legislation enacted by the Congress of the United States or introduced therein or recommended for passage by the President of the United States (if such enacted, introduced or recommended legislation has a proposed effective date which is on or before the Closing Date), (iii) any law, rule or regulation proposed or enacted by any governmental body, department or agency (if such proposed or enacted law, rule or regulation has a proposed effective date which is on or before the Closing Date) or (iv) any judgment, ruling or order issued by any court or administrative body, which in any such case would prohibit or materially restrict (or have the retroactive effect of prohibiting, if enacted adopted, passed or finalized) the Underwriters from underwriting the Bonds as provided herein or selling the Bonds or beneficial ownership interests therein to the public.

10. Good Faith Deposit. To secure the City from any loss resulting from the failure of the Underwriters to comply with the terms of this Purchase Contract, a cashier's check drawn on a bank or trust company transacting business in the State of California and payable to the order of the City's, in the amount of \$\_\_\_\_\_ (the "Good Faith Deposit"), accompanies this offer. The Good Faith Deposit will, immediately upon the City's acceptance of this offer, become the property of the City, and will be cashed. The Good Faith Deposit will be held and invested for the exclusive benefit of the City. If the Underwriters fail to pay the purchase price in full upon tender of the Bonds (other than for a reason expressly set forth in Paragraphs 8, 9, 18 or 19), the Underwriters will have no right to recover the Good Faith Deposit or to any allowance or credit therefor, and the Good Faith Deposit, together with any interest thereon, will be retained by the City as and for liquidated damages for such failure by the Underwriters. Retention of the Good Faith Deposit shall constitute the City's sole and exclusive remedy and full liquidated damages for the Underwriters' failure (other than for a reason expressly set forth herein) to purchase and accept delivery of the Bonds pursuant to the terms of this Purchase Contract. Upon such retention, the Underwriters shall be released and discharged from any and all claims for damages by the City against the Underwriters related to such failure and any other defaults by Underwriters hereunder. The Underwriters and the City hereby acknowledge and agree that the amount fixed pursuant to this Paragraph for liquidated damages does not constitute a penalty and is a reasonable estimate of the damages that the City would sustain in the event of the Underwriters' failure to purchase and to accept delivery of the Bonds pursuant to the terms of this Purchase Contract. The amount is agreed upon and fixed as liquidated damages because of the difficulty of ascertaining as of the date hereof the amount of damages that would be sustained in such event.

11. Expenses. The Underwriters shall be under no obligation to pay and the City shall pay or cause to be paid the expenses incident to the performance of the City's obligations hereunder including but not limited to (a) the cost of the preparation and printing, or other reproduction (for distribution on or prior to the date hereof) of the Financing Documents; (b) the fees and disbursements of Co-Bond Counsel and Disclosure Counsel to the City and any other advisors, experts or consultants retained by the City; (c) the cost of

preparation and printing and signing of the Bonds and the registration of the Bonds; (d) the cost of preparation and printing of the Preliminary Official Statement and the Official Statement and any supplements or amendments thereto; (e) charges of rating agencies for the ratings of the Bonds; [and (f) the bond insurance premiums]. The Underwriters shall pay (1) the cost of preparation and printing of the Blue Sky and legal investment memoranda to be used by it; (2) all advertising expenses incurred by the Underwriters in connection with the public offering of the Bonds; (3) the fees and disbursements of Underwriters' Counsel; and (4) all other expenses incurred by the Underwriters in connection with the public offering and distribution of the Bonds, including without limitation, travel expenses, CDIAC fees, DTC fees, Dalnet fees, any fees charged by the Municipal Securities Rulemaking Board, any blue sky fees and costs of assigning CUSIP numbers to the Bonds.

12. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code Section 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. The parties agree that because the City will pay claims as additional rent under the Lease or through other arrangements, false claims made to the City in connection with the Bonds shall be covered by said Section 21.35.

13. Conflict of Interest. Through its execution of this Purchase Contract, the City and the Representative each acknowledge 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 Purchase Contract.

14. Proprietary or Confidential Information of City. The City and the Representative each understands and agrees that, in the performance of the work or services under this Purchase Contract or in contemplation thereof, each such party 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. Each such party agrees that all information disclosed by City to such party shall be held in confidence and used only in performance of the

Agreement. Each such party shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

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

16. Works for Hire. If, in connection with services performed under this Purchase Contract, the Underwriters 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 the Underwriter under this Purchase Contract are not works for hire under U.S. law, such party 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, such party may retain and use copies of such works for reference and as documentation of its experience and capabilities.

17. Audit and Inspection of Records. The Underwriters each agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Purchase Contract. The Underwriters each 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 Purchase Contract, whether funded in whole or in part under this Purchase Contract. The Underwriters each shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Purchase Contract 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 Purchase Contract shall have the same rights conferred upon City by this Section.

18. Subcontracting. The Underwriters each are prohibited from subcontracting this Purchase Contract or any part of it unless such subcontracting is first approved by City in writing. None of the City, the Underwriters or the City shall, on the basis of this Purchase Contract, 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.

19. Assignment. The services to be performed by the Underwriters are personal in character and neither this Purchase Contract nor any duties or obligations hereunder may be assigned or delegated by any such party unless first approved by City by written instrument executed and approved in the same manner as this Purchase Contract.

20. Non-Waiver of Rights. The omission by any 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.

21. 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. The Underwriters each shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Purchase Contract becomes effective (unless such party 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 such party; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Purchase Contract.

b. Failure by the Underwriter to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by such party of the terms of this Purchase Contract. If, within thirty days after such party receives written notice of such a breach, such party fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, such party 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 Purchase Contract or under applicable law.

c. Any Subcontract entered into by the Underwriter 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 Purchase Contract shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

22. Local Business Enterprise Utilization; Liquidated Damages.

a. The LBE Ordinance.

The Underwriters each shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase such party's obligations or liabilities, or materially diminish such party's rights, under this Purchase Contract. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Purchase Contract as though fully set forth in this section. Such Party's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of such party's obligations under this Purchase Contract and shall entitle City, subject to any applicable notice and cure provisions set forth in this Purchase Contract, to exercise any of the remedies provided for under this Purchase Contract,

under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Purchase Contract expressly provides that any remedy is exclusive. In addition, each such party 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.

i. If the Underwriter willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Purchase Contract pertaining to LBE participation, such party shall be liable for liquidated damages in an amount equal to such party's net profit on this Purchase Contract, or 10% of the total amount of this Purchase Contract, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against such party authorized in the LBE Ordinance, including declaring such party to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of such party's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

ii. By entering into this Purchase Contract, the Underwriter acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Each such party further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to such party on any contract with City.

iii. The Underwriter agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Purchase Contract, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

23. Nondiscrimination; Penalties.

a. Covenant Not to Discriminate. In the performance of this Purchase Contract, the Underwriter agrees not to discriminate against any employee, City employee working with such party, applicant for employment with such party, 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. The Underwriter shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. The failure by any such party to comply with the obligations in this subsection shall constitute a material breach of this Purchase Contract.

c. Nondiscrimination in Benefits. The Underwriters do not as of the date of this Purchase Contract and will not during the term of this Purchase Contract, 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 San Francisco Administrative Code.

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

24. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City 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 urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the persons executing this Purchase Contract on behalf of the Underwriters each acknowledges and agrees that he or she has read and understood this section.

25. Tropical Hardwood and Virgin Redwood Ban. Pursuant to §804(b) of the San Francisco Environment Code, the City 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.

26. Drug-Free Workplace Policy. The Underwriters each 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. The Underwriter agrees that any violation of this prohibition by such party, its employees, agents or assigns will be deemed a material breach of this Purchase Contract.

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

28. Compliance with Americans with Disabilities Act. The Underwriter 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. Each such party shall provide the services specified in this Purchase Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Each such party agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Purchase Contract and further agrees that any violation of this prohibition on the part of such party, its employees, agents or assigns will constitute a material breach of this Purchase Contract.

29. Sunshine Ordinance. In accordance with San Francisco 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.

30. Public Access to Meetings and Records. If the Underwriter receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, such party shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Purchase Contract, such party 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. Such party 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. Such party acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Purchase Contract. Such Party 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.

31. Limitations on Contributions. Through execution of this Purchase Contract, the Underwriter acknowledges that it is familiar with section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for

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

32. Requiring Minimum Compensation for Covered Employees.

a. The Underwriter 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 Purchase Contract as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of the obligations under the MCO is set forth in this Section. The Underwriter is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

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

c. None of the Underwriter shall take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of

rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

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

e. The City is authorized to inspect the Underwriter's job sites and conduct interviews with employees and conduct audits of each such party.

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

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

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

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

33. Requiring Health Benefits for Covered Employees. The Underwriter 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 Purchase Contract as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Purchase Contract shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, the Underwriter shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If such party 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 Underwriter is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

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

d. Any Subcontract entered into by the Underwriter 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. Each such party 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 such party 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 the applicable party based on the Subcontractor's failure to comply, provided that City has first provided such party with notice and an opportunity to obtain a cure of the violation.

e. None of the Underwriter shall discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to such party'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. The Underwriter 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. The Underwriter shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. The Underwriter shall keep itself informed of the current requirements of the HCAO.

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

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

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

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

m. If the Underwriter is exempt from the HCAO when this Purchase Contract is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but such party later enters into an agreement or agreements that cause such party'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 such party and the City to be equal to or greater than \$75,000 in the fiscal year.

23. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, none of the Underwriter may 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 Purchase Contract. Each such party 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 any such party violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Purchase Contract, and (ii) prohibit such party from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider such party's use of profit as a violation of this section.

24. Preservative-treated Wood Containing Arsenic. None of the Underwriter not purchase preservative-treated wood products containing arsenic in the performance of this Purchase Contract 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. The Underwriters 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 any such party 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.

25. No Enforcement. Notwithstanding anything herein to the contrary, the City acknowledges that the Corporation has no employees and no business other than issuing bonds for the benefit of the City and therefore the City shall be wholly responsible for assuring satisfaction of any obligations or duties of Corporation pursuant to Sections 12 through 24 hereof.

26. Governing Law; Venue. The formation, interpretation and performance of this Purchase Contract shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Purchase Contract shall be in San Francisco.

27. Compliance with Laws. The Underwriter 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 Purchase Contract, 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.

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

29. Notices. Any notice or other communication to be given to the Corporation under this Purchase Contract (other than the acceptance hereof as specified in Section 1) may be given by delivering the same in writing to the Director, Office of Public Finance, City and County of San Francisco, City Hall, Room 336, 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102-4682; any notice or other communication to be given to the Representative or the Underwriters under this Purchase Contract may be given by delivering the same in writing to \_\_\_\_\_.

30. Parties in Interest. This Purchase Contract when accepted by the City in writing as specified in the first paragraph of this Purchase Contract shall constitute the entire agreement between the City and the Underwriters and is solely for the benefit of the City and the Underwriters. All representations and agreements of the City in this Purchase Contract shall remain operative and in full force and effect, regardless of (a) any investigation made by or on behalf of the Underwriters, (b) delivery of and payment for the Bonds hereunder and (c) any termination of this Purchase Contract.

31. Headings. The section headings in this Purchase Contract are inserted for convenience only and shall not be deemed to be a part hereof.

32. Effectiveness. This Purchase Contract shall become effective upon the execution hereof by the duly authorized representatives of the City, and shall be valid and enforceable at the time of such acceptance.

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30. Counterparts. This Purchase Contract may be executed in several counterparts, which together shall constitute one and the same instrument.

[LIST UNDERWRITERS]

By: [\_\_\_\_\_], as  
Representative

By: \_\_\_\_\_  
[Title]

CITY AND COUNTY OF SAN  
FRANCISCO

By: \_\_\_\_\_  
[Title]

APPROVED AS TO FORM:

DENNIS J. HERRERA,  
CITY ATTORNEY

By: \_\_\_\_\_  
Deputy City Attorney

**APPENDIX**  
**FORM OF SUPPLEMENTAL OPINION OF**

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[Delivery Date]

[TO COME]

**APPENDIX**  
**FORM OF SUPPLEMENTAL OPINION OF**

---

[TO COME]

**APPENDIX**

**FORM OF OPINION OF DISCLOSURE COUNSEL**

[Delivery Date]

[TO COME]

**APPENDIX**  
**FORM OF OPINION OF CITY ATTORNEY**  
**[TO COME]**

**APPENDIX**

**FORM OF OPINION OF COUNSEL TO \_\_\_\_\_**

**[TO COME]**

## **APPENDIX**

### **MATURITY DATES, PRINCIPAL AMOUNTS, INTEREST RATES AND YIELDS**

**Appendix C: Form of Remarketing Agent Agreement**

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§ \_\_\_\_\_  
**CITY AND COUNTY OF SAN FRANCISCO**  
**BONDS, SERIES \_\_\_\_\_**  
( \_\_\_\_\_ )

**REMARKETING AGREEMENT**

This REMARKETING AGREEMENT, dated as of \_\_\_\_\_ (this "Remarketing Agreement"), is by and between the CITY AND COUNTY OF SAN FRANCISCO (the "City"), \_\_\_\_\_ organized and existing under the laws of the State of California, and \_\_\_\_\_, as remarketing agent hereunder (the "Remarketing Agent");

*WITNESSETH:*

SECTION 1. *The Bonds, Terms, and Definitions.* The City is authorized to issue \$\_\_\_\_\_ aggregate principal amount of its \_\_\_\_\_ (the "Bonds") pursuant to the authority granted by \_\_\_\_\_ of the \_\_\_\_\_ (the "Law"), and a resolution adopted by the governing board of the City on \_\_\_\_\_ (the "Resolution") authorizing the issuance of the Bonds. The Bonds will be issued under an Indenture of Trust, dated as of \_\_\_\_\_ (the "Indenture"), between the City and \_\_\_\_\_, as trustee (the "Trustee"). *For lease revenue transactions:* [The Bonds will be limited obligations of the City, and will be secured by \_\_\_\_\_ to be made by the City and County of San Francisco (the "City") under a Lease, dated as of \_\_\_\_\_ (the "Lease"), by and between the City, as lessor, and the City, as lessee, of certain real property consisting of \_\_\_\_\_.]

Payments of the principal and purchase price of and interest on the Bonds will be secured by \_\_\_\_\_ (the "Credit Facility") issued by \_\_\_\_\_ (the "Credit Provider") pursuant to a \_\_\_\_\_ Agreement, dated as of \_\_\_\_\_ (the "Credit Agreement"), by and among the City, the City and the Credit Provider.

Capitalized terms used herein and not otherwise defined shall have the respective meanings given them in the Indenture or the Lease, as applicable. Bonds which are required to be tendered to the Trustee or the Tender Agent due to the exercise by a Bond Owner of its option to tender such Bonds for purchase with notice as provided in the Indenture or due to the mandatory purchase of such Bonds by the Trustee as provided in the Indenture are herein referred to as "Tendered Bonds."

SECTION 2. *Appointment of Remarketing Agent.* The City hereby appoints \_\_\_\_\_ and \_\_\_\_\_ hereby accepts such appointment, to act as exclusive Remarketing Agent in connection with the remarketing of any Tendered Bonds in accordance with, and subject to, the terms and conditions contained in this Remarketing Agreement and the Indenture.

SECTION 3. *Obligations of Remarketing Agent.*

(a) The Remarketing Agent agrees as follows:

(i) The Remarketing Agent agrees to use its best efforts to arrange for the remarketing of all Tendered Bonds in compliance with the provisions of the Indenture, and to use its best efforts to perform all actions provided in the Indenture to be performed

by the Remarketing Agent in connection therewith [, including, without limitation, Sections \_\_\_\_ of the Indenture,] which Sections are hereby incorporated herein and made a part hereof with the same effect as if such Sections were repeated verbatim herein.

(ii) The Remarketing Agent agrees that, during any Variable Rate Period (other than a Long Rate Period), it will attempt to place the Tendered Bonds only with institutional and retail investors and other entities or individuals that customarily purchase tax-exempt securities in large denominations.

(iii) The Remarketing Agent agrees that it will not sell or remarket any Tendered Bonds directly or indirectly to the City or to the City, excepting Bank Bonds; provided, however, that the Remarketing Agent may sell Bonds to the City if the City (A) provide the Remarketing Agent and the Trustee with an opinion of nationally recognized bond counsel to the effect that such sale will not, in and of itself, cause the Bonds to be considered retired or cancelled for purposes of federal tax law or State of California law; and (B) the City purchase the Bonds with Available Moneys.

(iv) Notwithstanding any other provision of this Remarketing Agreement, in accordance with the Indenture, from and after the expiration date of the Credit Facility, the Remarketing Agent shall have no obligation to arrange the remarketing of or to remarket any Tendered Bonds until the Credit Facility shall have been renewed, extended or replaced in accordance with the Indenture.

(v) The Remarketing Agent agrees to determine and provide notice of, pursuant to and in accordance with the provisions of the Bonds and Section 2.03(a) of the Indenture (which is hereby incorporated herein and made a part hereof with the same effect as if such Section were repeated verbatim herein), the Variable Rate during each Variable Rate Period.

(vi) In connection with all remarketing of Tendered Bonds pursuant to this Remarketing Agreement, the Remarketing Agent shall keep books and records of all remarketing transactions made by the Remarketing Agent with respect to the Bonds, including, but not limited to the rates it has determined for the Bonds, the amount of Bonds it has remarketed hereunder and the dates of such remarketings. Such books and records shall be kept in a manner consistent with prudent industry practice. The City, the City, the Trustee and the Credit Provider may examine such books and records at all reasonable times upon prior reasonable notice. The Remarketing Agent shall keep such records at least five years after it ceases to serve as Remarketing Agent hereunder.

(b) The Remarketing Agent agrees that in the event it is unable to find purchasers for:

(i) less than all of the Tendered Bonds, it will purchase such unremarketed Bonds for its own account at an interest rate to be agreed upon by the City and the Remarketing Agent; provided, that the interest rate will not exceed the interest rate that in the judgment of the Remarketing Agent would allow the Bonds to trade at par (but not to exceed the interest rate determined for any Bonds that are retained by investors or which have successfully been remarketed on or after the date the Remarketing Agent has been required to purchase Bonds for its own account) and shall in no event exceed the Maximum Interest Rate; and

(ii) for all of the Tendered Bonds, it will purchase such unremarketed Bonds for its own account at an interest rate agreed upon by the City and the Remarketing Agent; provided, that the interest rate shall in no event exceed the Maximum Interest Rate.

The period for holding such purchased Bonds shall be 30 days, unless otherwise agreed to by the parties hereto. This commitment by the Remarketing Agent to hold Bonds for its own account shall not apply to Bank Bonds that the Remarketing Agent may attempt to remarket from time to time pursuant to the Indenture.

(c) The Remarketing Agent's commitment to purchase or remarket the Bonds shall be suspended if, in the reasonable judgment of the Remarketing Agent, upon prior consultation with the City, the ability of the Remarketing Agent to remarket the Bonds is materially adversely affected because:

- (i) the City is in payment default on the Bonds;
- (ii) the short-term ratings of the Credit Provider and of the City by any two rating agencies are not in the two highest rating categories;
- (iii) the Credit Facility shall have terminated or expired or a notice that the Credit Provider's commitment to make Liquidity Advances (as defined in the Credit Agreement) has terminated shall have been delivered by the Credit Provider to the City;
- (iv) the event of a declaration of war or engagement in, or escalation of, military hostilities by the United States or the occurrence of any other national emergency or calamity relating to the effective operation of the government of, or the financial community in, the United States;
- (v) the event of a declaration of a general banking moratorium by federal, New York or California authorities, or event of a general suspension of trading on any national securities exchange;
- (vi) any representation or warranty of the City contained or incorporated by reference herein shall be untrue or inaccurate in any material respect on an as of any date on which Bonds are to be remarketed pursuant to this Agreement;
- (vii) any Event of Default has occurred and is continuing under the Indenture or the Lease, or an event shall have occurred and be continuing which, with the passage of time or giving of notice, or both, would constitute such an Event of Default;
- (viii) the Indenture, the Lease or the Credit Facility shall have been amended modified or supplemented in any way which would materially adversely affect the Bonds and has not been agreed to in writing by the Remarketing Agent;
- (ix) legislation shall have been introduced in or enacted by the Congress of the United States or adopted by House thereof, or legislation pending in the Congress of the United States shall have been amended, or legislation shall have been recommended for passage (by press release, other form of notice or otherwise) by the President of the United States, the Treasury Department of the United States, the Internal Revenue Service or Chairman or ranking minority member of the U.S. Senate Committee on Finance or the U.S. House of Representatives Committee on Ways and Means or legislation shall have been proposed for consideration by such Committee by any

member thereof or legislation shall have been favorably reported for passage to House of Congress of the United States by a committee of such House to which legislation has been referred for consideration, or a decision by a court of the United States shall be rendered or a ruling, regulation or official statement by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made, with respect to Federal taxation of revenues or with respect to other income of the general character expected to be derived under the Indenture by the City or upon interest received on securities of the general character of the Bonds or which would have the effect of changing the Federal income tax consequences of receipt of interest on securities of the general character of the Bonds in the hands of the owners thereof;

(x) legislation shall be introduced by committee, by amendment or otherwise, in, or be enacted by, the House of Representatives or the Senate of the United States, or a decision by a court of the United States shall be rendered, or a stop order, ruling, regulation or official statement by, or on behalf of, the United States Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made or proposed, to the effect that the offering, sale or remarketing of obligations of the general character of the Bonds, as contemplated hereby, is or would be in violation of any provisions of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect, or otherwise prohibiting the offering, sale or remarketing of obligations of the general character of the Bonds, or the Bonds, as contemplated hereby, or of requiring the registration or qualification of the Indenture or the Bonds or sales thereof under any of said Acts;

(xi) any information shall have become known, which, in the reasonable opinion of the Remarketing Agent (taking into consideration, among other things, the optional tender rights of the Owners under the Indenture, the Credit Facility or any alternate Credit Facility), makes untrue, incorrect or misleading in any material respect any statement or information contained in the Official Statement, as the information contained therein has been supplemented or amended by other information furnished in accordance with Section 7 hereof, or causes the Official Statement, as so supplemented or amended, to contain an untrue, incorrect or misleading statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading; or

(xii) an event, including, without limitation, the Remarketing bankruptcy or default of any other issuer of or obligor on obligations of the general character of the Bonds or on tax-exempt commercial paper, shall have occurred.

(d) The Remarketing Agent may resign upon not less than ninety (90) days' prior written notice given as hereinafter set forth, and such resignation shall take effect upon the earlier of 180 days after the date such notice is given or the date a successor has been appointed. Any such resignation notice shall be given by the Remarketing Agent to the City, the City, the Credit Provider and the Trustee. The Remarketing Agent may be removed by the City upon not less than fifteen (15) days' prior written notice given as hereinafter set forth, and such resignation shall take effect upon the earlier of 180 days after the date such notice is given or the date a successor has been appointed. Any such removal notice shall be given by the City to the Trustee, the City and the Credit Provider. If the Remarketing Agent is holding unremarketed Bonds for its own account as of the effective date of such resignation or removal, upon expiration of the 90-day period referenced in subparagraph (b) above, the Remarketing Agent, as a Bond

Owner, may exercise its option to tender such Bonds for purchase as provided in the Indenture. The foregoing notwithstanding, no resignation or removal of the Remarketing Agent shall become effective unless the City shall have previously appointed a successor Remarketing Agent and such successor Remarketing Agent shall have accepted such appointment, or the interest rate on the Bonds have been converted to a Fixed Rate, or 180 days shall have passed since the date the notice of resignation or removal was given. Such successor Remarketing Agent may purchase any Bonds held by the Remarketing Agent as of the effective date of such resignation or removal at a purchase price equal to the principal amount thereon plus accrued interest thereon to the effective date of such resignation or removal.

(e) The Remarketing Agent acknowledges that the City intends to conduct a regular evaluation of the Remarketing Agent. Such evaluation will consider, among other things, an analysis of interest rates on the Bonds remarketed hereunder in connection with the interest rates on similar bonds remarketing by the Remarketing Agent and others. In connection with such regular evaluations, the Remarketing Agent agrees to provide the City with such information as it may request.

(f) The Remarketing Agent acknowledges that the City has delivered to it executed or certified copies of the Indenture, the Lease, the Site Lease, the Credit Facility and the Credit Agreement, and any and all other documents, certificates and opinions relating to the Bonds which the Remarketing Agent requires to perform its obligations and duties hereunder.

(g) The Remarketing Agent agrees that, upon the written request of the City, it will provide the City, as soon as practicable, a list of the names and addresses of the institutional owners of the Bonds. The Remarketing Agent also agrees that, upon the written request of the City, it will provide the City, as soon as practicable, a list of the names and addresses of the retail owners of the Bonds, subject to the consent by such owners to provide such information to the City.

#### SECTION 4. *Fees and Expenses; Notices.*

(a) During the period in which the Bonds bear interest at a Variable Rate (other than a Semiannual Rate or a Long Rate) and the Remarketing Agent is serving as such hereunder, the City shall pay to the Remarketing Agent a fee with respect to the remarketing and related administrative services for the Bonds, which fee shall be equal to (i) while the Bonds bear interest at a Weekly Rate, \_\_\_ basis points (\_\_\_%) per annum of the amount of Bonds Outstanding at the time when said fee is due and payable and (ii) while the Bonds bear interest at a Daily Rate, \_\_\_ basis points (\_\_\_%) per annum of the amount of Bonds Outstanding at the time when said fee is due and payable, and shall be computed on the basis of a 365/366-day year (as the case may be), and actual number of days elapsed. Said fee shall be due and payable by check upon receipt of an invoice from the Remarketing Agent quarterly in arrears, on the first Business Day of April, July, October and January of each year, commencing \_\_\_\_\_, and upon the redemption in whole of the Bonds or earlier termination of this Agreement. In the event the interest rate on the Bonds is converted to a Semiannual Rate or a Long Rate, the City and the Remarketing Agent will agree at that time to a fee with respect to remarketing the Bonds in such interest rate modes.

(b) In the event that the City shall determine to convert the rate of interest on the Bonds to a Fixed Rate pursuant to Section 2.03(i) of the Indenture, the City has the right, but is not required to designate the Remarketing Agent as the underwriter in connection therewith (the "Fixed Rate Underwriter"). In the event the Remarketing Agent shall be designated as the Fixed Rate Underwriter, the Remarketing Agent and the City shall enter into a separate agreement providing for the services of and compensation to the Fixed Rate Underwriter, and the provisions of such agreement shall supersede this Remarketing Agreement.

(c) Any notice to be given by either party hereto to the other party hereto shall be given as provided in Section 11.07 of the Indenture.

(d) The obligations of the City under this Section 4 shall be limited obligations of the City, payable solely from the City's payment of Additional Rental pursuant to the Lease.

SECTION 5. *Representations and Warranties of the Remarketing Agent.* The representations and warranties of the Remarketing Agent set forth in the Purchase Contract, dated \_\_\_\_\_ (the "Purchase Contract"), between the City and the Remarketing Agent, in its capacity as underwriter of the Bonds, are true and correct and are hereby incorporated by reference herein as though fully set forth herein.

SECTION 6. *Representations and Warranties of the City.* The City represents, warrants, covenants and agrees as follows:

(a) The City is a City that has been duly organized and is validly existing and in good standing under the laws of the State of California;

(b) The City has full power and authority to take all action required to be taken by it by or under, and to perform and observe, the covenants and agreements on its part contained in this Remarketing Agreement and is fully licensed in all jurisdictions where necessary to perform its obligations and duties as set forth in this Remarketing Agreement;

(c) The City has, on or before the date hereof, duly taken all action necessary to be taken by it prior to such date to authorize the execution, delivery and performance of this Remarketing Agreement and the carrying out, giving effect to, consummation and performance of the transactions and obligations contemplated thereby;

(d) This Remarketing Agreement when executed and delivered by the parties hereto will constitute a valid and binding obligation of the City enforceable against the City in accordance with its terms, except as the enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws, judicial decisions or principles of equity relating to or affecting the enforcement of creditors' rights or contractual obligations generally; and

(e) The execution and delivery of this Remarketing Agreement, the compliance with the terms, conditions or provisions hereof, and the consummation of the transactions herein contemplated do not, upon the date of execution and delivery thereof, and will not violate any presently existing law, regulation, order, writ, injunction or decree of any court or governmental instrumentality applicable to the City.

SECTION 7. *Furnishing of Offering Materials.*

(a) The City agrees to furnish the Remarketing Agent with as many copies of the Official Statement as the Remarketing Agent may reasonably request, as the same may be supplemented or amended from time to time, and such other information with respect to the City, the Credit Provider (so long as the Credit Facility is in effect), the Indenture, the Lease, the Site Lease, the Credit Agreement and the Bonds as the Remarketing Agent shall reasonably request from time to time. The City hereby authorizes the Official Statement and the information contained therein to be used by the Remarketing Agent in connection with the remarketing of the Bonds.

(b) The City agrees to cooperate with the Remarketing Agent in the preparation of a new Official Statement or other offering material for the Bonds in the event the Remarketing Agent reasonably

determines that the preparation and distribution of such Official Statement or offering material is desirable in connection with remarketing the Bonds.

(c) If, at any time during the term of this Remarketing Agreement, any event or condition shall occur or otherwise become known to the City which the City reasonably determines would result in the Official Statement containing any untrue, incorrect or misleading statement of a material fact or omitting to state a fact which an actual or prospective investor in the Bonds would deem material to his, her or its decision to purchase or hold the Bonds (taking into consideration, among other things, the optional tender rights of the Owners under the Indenture, the Credit Facility or any Alternate Credit Facility), (i) the City will promptly notify the Remarketing Agent in writing of the circumstances and details of such event or condition, (ii) if, in the reasonable opinion of the Remarketing Agent or the City, such event or condition requires the preparation and publication of an amendment or supplement to the Official Statement, the City, at its expense, will promptly prepare or cause to be prepared an appropriate amendment or supplement thereto so that the statements in the Official Statement (except for information regarding DTC and its book-entry only system) as so amended or supplemented will not contain any untrue, incorrect or misleading statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, in a form and manner approved by the Remarketing Agent and the City, which approval shall not be unreasonably withheld or delayed, and (iii) the City shall take all necessary action to approve such supplement or amendment.

(d) In connection with the remarketing of the Bonds as a result of, or in anticipation of, (i) an expiration, termination or replacement of the Credit Facility or (ii) any conversion to an interest rate other than the Weekly Rate, the City shall prepare or cause to be prepared any disclosure documents (including continuing disclosure undertakings required by the rules and regulations of the Securities and Exchange City) which in the sole judgment of the Remarketing Agent or the City are necessary or desirable. All costs incurred in connection with the preparation of such disclosure documents shall be borne by the City.

SECTION 8. *Term.* Unless previously terminated, this Agreement shall remain in full force and effect for so long as the Bonds bear interest at the Variable Rate.

SECTION 9. *Miscellaneous.*

(a) All notices, certificates, requests, or other communications among the parties hereto permitted or required to be given hereunder shall be given as provided in the Indenture.

(b) This Remarketing Agreement shall be governed by and construed in accordance with the laws of the State of California.

(c) The Remarketing Agent's duties and obligations as Remarketing Agent shall be governed solely by the terms of this Remarketing Agreement and the Indenture, anything in any other document to the contrary notwithstanding. Any conflict between the terms of the Indenture or any other agreement and this Remarketing Agreement shall be resolved in favor of the Indenture.

(d) Anything in this Remarketing Agreement or the Indenture to the contrary notwithstanding, other than as provided in Section 3(b), the Remarketing Agent shall not be required to advance any of its funds or otherwise incur financial liability in carrying out its duties hereunder.

(e) This Remarketing Agreement may be amended only by a written agreement signed by the City and the Remarketing Agent.

(f) This Remarketing Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall constitute an original, but such counterparts together shall constitute but one and the same Remarketing Agreement.

(g) The City's execution hereof shall not be deemed to impose upon the City any responsibility for the performance of the Remarketing Agent hereunder, or impose upon the City any financial liability or responsibility, other than as expressly set forth herein.

(h) It is the express intention of the parties hereto that no purchase, sale or transfer of any Bonds, as herein provided, or the setting of interest rates in respect thereof, shall constitute or be construed to be the extinguishment of any Bond or the indebtedness represented thereby or the reissuance of any Bond or the refunding of any indebtedness represented thereby.

(i) No obligations imposed on the Remarketing Agent under the Indenture or hereunder or any actions taken by the Remarketing Agent in performing such obligations shall constitute a representation or warranty by the Remarketing Agent that, with respect to any interest rate determination, there is a market for the sale of Bonds affected thereby or that such Bonds can be sold or can or will be sold at par, or that, with respect to any remarketing effort, it is required to or will purchase any Bonds (except as provided in Section 3(b)) or expend any of its own funds or incur any liability for any portion of the Purchase Price of any Bonds; provided, that nothing contained herein shall prohibit the Remarketing Agent from purchasing Bonds or functioning as a broker or dealer with respect to the Bonds.

(j) The duties of the Remarketing Agent shall be solely as provided herein and in the Indenture and no implied covenants or obligations shall be read into this Remarketing Agreement against the Remarketing Agent.

(k) The Remarketing Agent shall incur no liability to the City or any other party for its actions as Remarketing Agent pursuant to the terms hereof and of the Indenture except for its own negligence or willful misconduct. The Remarketing Agent shall not be liable to the City on account of the failure of any person to whom the Remarketing Agent has sold a Bond to pay for it or to deliver any document in respect of such sale.

#### SECTION 10. *City Requirements.*

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

(b) Subcontracts. The Remarketing Agent shall incorporate by reference in all subcontracts made in fulfillment of its obligations hereunder the provisions of Section 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from purchasing) and shall require all subcontractors to comply with such provisions. The Remarketing Agent's failure to comply with the obligations in this subsection shall constitute a material breach of this Remarketing Agreement.

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

(d) HRC Form. The Remarketing Agent 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) City of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Remarketing Agreement as though fully set forth herein. The Remarketing Agent shall comply fully with and be bound by all of the provisions that apply to this Remarketing Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Remarketing Agent understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Remarketing Agreement may be assessed against the Remarketing Agent and/or deducted from any payments due the Remarketing Agent; provided, however that such damages shall not be set off against the payment of rental or other contract related to bonds, certificates of participation or other debt obligation of the City or the City.

(f) Drug-Free Workplace Policy. The Remarketing Agent 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 or City premises. The Remarketing Agent agrees that any violation of this prohibition by the Remarketing Agent, its employees, agents or assigns will be deemed a material breach of this Remarketing Agreement.

(g) Compliance with Americans with Disabilities Act. Without limiting any other provisions of this Remarketing Agreement, the Remarketing Agent shall provide the services specified in this Remarketing Agreement in a manner that complies with the Americans with Disabilities Act (ADA) Title 24, and any and all other applicable federal, state and local disability rights legislation. The Remarketing Agent agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Remarketing Agreement and further agrees that any violation of this prohibition on the part of the Remarketing Agent, its employees, agents or assigns shall constitute a material breach of this Remarketing Agreement.

(h) Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors’ bids, responses to solicitations and all other records of communications between the City, 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 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.

(i) Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, the Remarketing Agent may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in the performance of the services provided under this Remarketing Agreement. The Remarketing Agent 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 the Remarketing Agent violates the provisions of this section, the City or the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Remarketing Agreement, and (ii) prohibit the Remarketing Agent from bidding on or receiving any new City or City contract for a period of two (2) years.

(j) MacBride Principles—Northern Ireland. The City and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and the City urge San Francisco companies to do business with Citys that abide by the MacBride Principles.

(k) Tropical Hardwood and Virgin Redwood Ban. The City and the City urge companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product or any virgin redwood or virgin redwood product.

(l) Repeal of Administrative Code Provisions. To the extent that the City repeals any provision of the Administrative Code incorporated, set forth or referenced in this Section 10, other than pursuant to a restatement or amendment of any such provision, such provision, as incorporated, set forth or referenced herein, shall no longer apply to this Remarketing Agreement or the Remarketing Agent.

(m) \_\_\_\_\_ A Third Party Beneficiary. The \_\_\_\_\_ is hereby designated as a third party beneficiary hereunder for the purpose of enforcing any of the obligations of the City and the Remarketing Agent contained in Section 10(a) through and including Section 10(k) of this Remarketing Agreement.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed and delivered this Remarketing Agreement as of the day and year first written above.

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_,  
as Remarketing Agent

By: \_\_\_\_\_  
Authorized Officer

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**Appendix D: Form of Commercial Paper Dealer Agreement**

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## DEALER AGREEMENT

THIS DEALER AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_ by and between the City and County of San Francisco (the "City") and \_\_\_\_\_ (the "Bank"). The Bank is referred to herein as "Dealer."

### RECITALS

The City proposes to issue and reissue its Commercial Paper Notes in the maximum aggregate principal amount of \$\_\_\_\_\_ at any time outstanding (the "Notes"). The Notes will be authorized pursuant to \_\_\_\_\_, adopted by the City on \_\_\_\_\_ and Resolution \_\_\_\_\_ adopted by the Board of Supervisors of the City (the "Board of Supervisors") on \_\_\_\_\_ and signed by the Mayor of the City on \_\_\_\_\_ (collectively, the "Note Resolution") and \_\_\_\_\_ of the Administrative Code of the City (the "Ordinance") and will be issued in accordance with the Issuing and Paying Agent Agreement dated as of \_\_\_\_\_ (the "Issuing and Paying Agent Agreement") between the City and the Trustee. The Notes will be secured by a pledge of \_\_\_\_\_ of the City and will be further secured by \_\_\_\_\_ (the "Credit Agreement") issued by \_\_\_\_\_ (the "Credit Facility Provider"). The Bank has agreed to act as the Dealer for the Notes and to perform the duties imposed by this Agreement.

### AGREEMENTS

NOW, THEREFORE, for and in consideration of the covenants herein made, and subject to the conditions herein set forth, the parties hereto agree as follows:

**Section 1. Definitions.** Unless the context clearly indicates a contrary meaning, each capitalized term used in this Agreement shall have the meaning given to that term in the Issuing and Paying Agent Agreement.

**Section 2. Appointment of Dealers; Acceptance; Allocations; Evaluations.**

(a) Subject to the terms and conditions set forth in this Agreement, the City hereby appoints the Bank as the Dealer for the Notes, and the Bank hereby accepts such appointment and accepts and agrees to perform the duties and obligations imposed upon it as the Dealer under this Agreement, subject to the terms, conditions and limitations set forth in this Agreement.

(b) The Dealer shall act as a non-exclusive Dealer with respect to the Notes and shall be responsible to solicit and arrange sales of the Notes allocated to it, including, without limitation, the initial placement of such Notes and subsequent sales, establishing the rates and maturities of such Notes from time to time. The Dealer acknowledges that the City may enter into agreements with other dealers in connection with the offering and sale of the Notes. The City reserves the right to allocate and reallocate Notes among the other dealers with respect to the Notes at any time in its sole discretion for any reason.

(c) The Dealer acknowledges that the City intends to conduct regular dealer evaluations. Such evaluation will consider, among other things, an analysis of interest rates on the Notes allocated hereunder and managed by the Dealer in comparison to the interest rates provided by other dealers.

(d) The Dealer acknowledges that the City has delivered to it a certified copy of the Note Resolution, the Issuing and Paying Agent Agreement, the Credit Agreement and a Certificate of Designated Representatives in accordance with Section 6 hereof.

(e) The Dealer hereby agrees that, upon the written request of the City, that it will use its best efforts to provide the City, as soon as practicable, a list of the beneficial owners of the Notes to whom such Dealer has sold Notes.

(f) The Dealer hereby agrees that it will comply with all statutes and regulations applicable to it, including without limitation, all applicable securities laws and requirements of the Municipal Securities Rulemaking Board or any regulatory body having jurisdiction over the Dealer, and whereby non-compliance would adversely affect the Notes or the City's Note program.

### **Section 3. Sale and Purchase of Notes.**

(a) The Dealer acknowledges that the terms and conditions of the Notes are set forth in the Issuing and Paying Agent Agreement and that in particular, (i) the Notes shall be issued in denominations of \$100,000 and in integral multiples of \$1,000 in excess thereof, (ii) the Notes shall bear interest payable at maturity at an annual rate (calculated on the basis of a year consisting of 365 days and the actual number of days elapsed) payable at maturity which shall not in any event exceed the Maximum Interest Rate of 12%, (iii) the Notes shall mature on a Business Day not more than 270 days after their respective dates, but in no event later than the Business Day immediately preceding the Termination Date, and (iv) the Notes shall be sold at a price equal to 100% of the principal amount thereof.

(b) The Dealer shall use its best efforts to solicit and arrange sales of the Notes at such rates and maturities as may prevail from time to time in the market in accordance with Section 4 below. The Dealer agrees to make a good faith effort to notify City if for any reason it believes that it will not be able to sell the Notes on the date such Notes are to be issued or resold. The Dealer and the City agree that any Notes which such Dealer may purchase or for which such Dealer may arrange the sale, will be purchased or sold on the terms and conditions and in the manner provided in the Issuing and Paying Agent Agreement and this Agreement. Anything herein to the contrary notwithstanding, to the extent of any conflict between the provisions hereof and the Issuing and Paying Agent Agreement, the provisions of the Issuing and Paying Agent Agreement shall be controlling.

(c) [Reserved].

**Section 4. Transactions in Notes.** All transactions in Notes between the Dealer and the City shall be in accordance with the Note Resolution, the Ordinance, the Issuing and Paying Agent Agreement, this Agreement, the Credit Agreement and with the customs and practices in the commercial paper market regarding settlement and delivery formally adopted in writing from

time to time by the New York Clearinghouse, to the extent not inconsistent with the Issuing and Paying Agent Agreement. As early as possible, but not later than 12:00 p.m. (New York City time) on the Business Day on which any Notes are to be issued or resold, the Dealer shall notify the Director of the Office of Public Finance of the City (which shall be deemed to include his or her designee) of the proposed final maturities, prices and interest rates (which interest rates shall not exceed the Maximum Interest Rate) at which such Dealer will purchase the Notes, and provide the Director of the Office of Public Finance with any other information as required for delivery of such Notes. The Dealer shall not be obligated to purchase any Notes unless and until agreement, as described in the following sentence, has been reached in each case on the proposed final maturities, prices and interest rates. Not later than 1:00 p.m. (New York City time) on the date of issuance of the Notes, the Director of the Office of Public Finance may approve or disapprove of such final maturities, prices and interest rates (provided that if the Director of the Office of Public Finance does not provide notice to the Dealer of disapproval then the Director of the Office of Public Finance shall be deemed to have approved such terms) and such Dealer shall either (a) confirm each transaction made with or arranged by it or (b) notify the City and the Issuing and Paying Agent of the difference, if any, between the amount of maturing Notes and the amount of Notes which such Dealer has arranged to sell or has agreed to purchase. Such confirmation or notification shall be given by telephone (or by other telecommunications medium acceptable to the City) and confirmed in writing to the City and the Issuing and Paying Agent.

**Section 5. Payment for Notes.** The Dealer shall pay for the Notes purchased by such Dealer or sold by such Dealer in immediately available funds by 2:15 p.m. (New York City time) on the Business Day such Notes are delivered to such Dealer. All Notes will be sold at par, and will be executed in the manner provided for in the Issuing and Paying Agent Agreement.

**Section 6. Designated Representative.** Note transactions with the City, pursuant to Section 4 hereof, shall be with the Director of the Office of Public Finance and any one of the officers or employees of the City who are designated as a Designated Representative by a certificate signed by the \_\_\_\_\_ of the City. The City will deliver to the Dealer a Certificate of Designated Representatives in the form appended to the Issuing and Paying Agent Agreement as Exhibit C. The Director of the Office of Public Finance agree to provide the Dealer with a revised Certificate of Designated Representatives in substantially said form when and as required by changes in the Designated Representatives. The Dealer may rely upon such Certificate of Designated Representatives unless and until otherwise notified in writing by the Director of the Office of Public Finance.

The Controller of the City shall, throughout the term of this agreement, be authorized to initiate Note transactions, notwithstanding any provision hereof or future amendment hereof to the contrary.

**Section 7. Certain Representations of the City.** The City represents to the Dealer as follows:

(a) As of the date of each issuance of Notes: (i) the City has full power and authority to issue the Notes, to enter into, perform and observe the covenants and agreements on its part contained in this Agreement, the Issuing and Paying Agent Agreement, the Credit Agreement

(collectively, the “Documents”); (ii) such Documents have been duly authorized, executed and delivered by the City; and such Documents constitute legally valid and binding obligations of the City, in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally and subject, as to enforceability, to the general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(b) As of the date of each issuance of Notes, the Note Resolution is in full force and effect and has not been repealed, modified or amended since its adoption.

(c) As of the date of each issuance of Notes, the Ordinance is in full force and effect and has not been repealed, modified or amended since its adoption.

(d) As of the date of each issuance of Notes, such Notes have been duly authorized and executed by the City, and when authenticated and delivered by the Issuing and Paying Agent, will be in conformity with, and entitled to the benefits of the Note Resolution and the Issuing and Paying Agent Agreement.

(e) The Offering Memorandum dated \_\_\_\_\_, does not as of its date contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that the City makes no representation with respect to information therein regarding the Banks, the Credit Facility, the Dealers or any other dealers, the Issuing and Paying Agent and DTC and its book-entry only system.)

**Section 8. Offering Memorandum and Disclosure.**

(a) The City shall prepare or cause to be prepared the Offering Memorandum with respect to the Notes. The City shall prepare or cause to be prepared an update to the Offering Memorandum on an annual basis by December 31 of each year (or at any other time in the sole discretion of the City) if in the judgment of the City, the then-existing Offering Memorandum is misleading in any material respect.

(b) The City shall provide the Dealer with:

(i) prompt notice and a copy of any amendment to the Issuing and Paying Agent Agreement, or of the substitution, termination or extension of the Credit Facility;

(ii) prompt notice of the occurrence and continuance of an Event of Default under the Issuing and Paying Agent Agreement, or the Credit Agreement;

(iii) prompt notice of the receipt by the City of notification from Bond Counsel that the City may not continue to rely on their opinion regarding the validity or tax-exempt status of the Notes.

(c) The City will furnish the Dealer such documents and information concerning the business, operations and financial condition of the City, as such Dealer may from time to time reasonably request.

(d) If in the reasonable opinion of either Dealer, with the concurrence of Bond Counsel and the City Attorney, changes in applicable law require that a disclosure document more extensive than the Offering Memorandum be prepared and distributed, the City agrees to prepare such document, with the assistance of such Dealer.

(e) The Dealer shall provide a copy of the Offering Memorandum, as supplemented, amended and updated from time to time, to each person to whom it sells Notes prior to or with the delivery of any payment confirmation. The Dealers shall not provide prospective or actual purchasers of the Notes with any written offering materials, disclosure documents or other documents or information in connection with the solicitation of purchases and sales of the Notes other than the Offering Memorandum and any supplements, amendments or updates thereto and the Issuing and Paying Agent Agreement and the Credit Agreement, as the same may be amended, supplemented or replaced from time to time.

**Section 9. Compensation to Dealers.**

(a) For the services to be performed by the Dealers under this Agreement, the City agrees to pay the Dealer a fee equal to \_\_\_ basis points (\_\_\_%) of the average outstanding principal amount of the Notes managed by such Dealer, payable quarterly in arrears on the last day of each March, June, September and December, commencing Month Day, Year.

(b) The City's obligations under this Section 9 which have accrued or arisen prior to the effective date of any termination or expiration of this Agreement shall survive such termination or expiration.

**Section 10. Termination.** This Agreement may be terminated by the City at any time with respect to any Dealer and by any Dealer upon not less than 90 days' prior written notice to the City, provided that the Dealer may terminate with 60 days' prior written notice which resignation will become effective only upon the appointment by the City of a successor Dealer. Notwithstanding the previous sentence, if the Dealer notifies the City that there is a material misstatement in, or omission from, the Offering Memorandum (or other disclosure materials provided by the City) and the City shall fail to cure such defect in a manner reasonably satisfactory to such Dealer within 30 days of such notice, such Dealer may terminate this Agreement on the 30th day following the giving of such notice. Notwithstanding the foregoing, no such termination shall affect the rights or obligations of the City or Dealer hereunder arising prior to such termination.

**Section 11. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be regarded as an original but all of which shall constitute one and the same document.

**Section 12. Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA.

**Section 13. Notices.** Except as otherwise specifically provided herein, all notices required or provided for under this Agreement shall be in writing and shall be delivered by hand, first class mail (postage prepaid), telex, telecopier, telegram, overnight express delivery or

electronic mail, and shall be effective when received at the following addresses or at such other address as a party may designate in a notice delivered to the other part hereto in accordance herewith:

If to the City: City and County of San Francisco  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copies to: City and County of San Francisco  
Mayor's Office of Public Finance  
City Hall, Room 336  
San Francisco, California 94102  
Fax: (415) 554-4864  
Attention: Director of Public Finance

City and County of San Francisco  
Office of the Controller  
City Hall, Room 316  
San Francisco, California 94102  
Fax: (415) 554-7466  
Attention: Controller

If to Dealer Name: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

**Section 14. Assignment.** This Agreement shall not be assignable by any party hereto without the prior written consent of the other parties. This Agreement shall inure to the benefit of and shall be binding upon the City and the Dealer and their respective successor and assigns. This Agreement shall not be deemed to give any legal or equitable right, remedy or claim to any other person or entity other than the parties hereto.

**Section 15. Headings.** The section headings hereof have been inserted for convenience of reference only, shall not be part of this Agreement, and shall not be used to construe, define, limit or interpret the meaning of any provision hereof.

**Section 16. Severability.** If any provision of this Agreement shall be held or deemed by a court of competent jurisdiction to be invalid, inoperative or unenforceable for any reason, such determination shall not affect the validity or enforceability of the remaining provisions hereof.

**Section 17. Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered hereby, and supersedes all prior agreements and understandings between the parties. This Agreement shall only be amended, supplemented or modified in a writing signed by all of the parties hereto.

**Section 18. No Personal Liability.** The City and their respective supervisors, members, officers, employees, representatives, agents and attorneys shall not be held personally liable for the execution or performance of this Agreement, or any breach or default of the provisions hereof.

**Section 19. City Requirements.**

(a) **Tropical Hardwood and Virgin Redwood Ban.** The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product or any virgin redwood or virgin redwood product.

(b) **Dealer Shall Not Discriminate.** In the performance of this Agreement, the Dealer agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any Dealer employee working with, or application for employment with such Dealer in any of such Dealer's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social, or other establishments or organizations operated by such Dealer.

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

(ii) **Condition to Contract.** As a condition to this Agreement, unless HRC Form 12B-105 has been approved by the Human Rights City, the Dealer 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 City ("HRC").

(iii) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Dealer shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Dealer understands that unless HRC Form 12B-105 has been approved by the Human Rights City, pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against such Dealer and/or deducted from any payments due such Dealer.

(c) Contractors Doing Business with the City Prohibited from Making Contributions. Pursuant to Section 16.570-2 of the San Francisco Administrative Code, such Dealer acknowledges that no person who contracts with the City, including the City, for the rendition of personal services, or 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 times between commencement of negotiations and either the completion of, or the termination of, negotiations for such contract.

(d) Prohibition of Tobacco Advertising. The Dealer acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designated to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

(e) McBride Principles - Northern Ireland. The City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the McBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* The City urges San Francisco companies to do business with corporations that abide by the McBride Properties.

(f) Drug-Free Workplace Policy. The Dealer 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 the City premises. The Dealer agrees that any violation of this prohibition by the Dealer, its employees, agents or assigns will be deemed a material breach of this Agreement.

(g) Sunshine Ordinance. In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to requests for proposals 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 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.

(h) Resource Conservation; Liquidated Damages. Chapter 21A of the San Francisco Administrative Code ("Resource Conservation") is incorporated herein by reference. Failure by the Dealer to comply with any of the requirements of Chapter 21A shall be deemed a material breach of this Agreement. In the event the Dealer fails to comply in good faith with any of the provisions of Chapter 21A, such Dealer shall be liable for liquidated damages in an amount equal to such Dealer's net profit under the contract, or five percent (5%) of the total amount of the contract dollars whichever is greatest. The Dealer acknowledges and agrees that the liquidated damages assessed shall be payable to City upon demand and may be set off against any moneys due to such Dealer from any agreement with City.

(i) Compliance with Americans with Disabilities Act. Without limiting any other provision of this Agreement, the Dealer shall provide the services specified in this contract in a manner that complies with the Americans with Disabilities Act (ADA) Title 24, and any and all other applicable federal, state and local disability rights legislation. The Dealer 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 such Dealer, its employees, agents or assigns shall constitute a material breach of this Agreement.

(j) Requiring Minimum Compensation for Employees. The Dealer 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 [www.ci.sf.ca.us\MCO](http://www.ci.sf.ca.us/MCO). 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, the Dealer agrees to all of the following:

(i) 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, the Dealer 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 minimum hourly gross compensation portion of the MCO, the Dealer shall pay \$9.00 an hour through December 31, 2001. On January 1, 2002, the Dealer shall increase the minimum hourly gross compensation to \$10.00 an hour; provided, however, that if the Dealer is a Nonprofit Corporation or a public entity, it shall be required to pay the increased amount only if the City makes the finding required by Section 12P.3(a)(ii) of the San Francisco Administrative Code. If the Dealer is required to increase the minimum gross hourly compensation to \$10.00 an hour, it shall provide the 2.5% annual increase required by the MCO for each of the next three years.

(ii) The Dealer shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to such Dealer'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.

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

(iv) If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, the Dealer fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, such Dealer 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:

(A) The right to charge such Dealer 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;

(B) The right to set off all or any portion of the amount described in Subsection (d)(i) of this Section against amounts due to such Dealer under this Agreement;

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

(D) In the event of a breach by such Dealer 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

(E) The right to bar such Dealer from entering into future contracts with the City for three (3) 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.

(v) The Dealer 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.

(vi) The Dealer 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 such Dealer from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

(vii) The Dealer shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

(viii) The Dealer 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.

(ix) The City may conduct random audits of the Dealer. 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 (10) days of the written notice; and (iv) limited to one audit of such Dealer 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.

(x) Any subcontract entered into by the Dealer 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 Dealer and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. The Dealer 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 the Dealer'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 such Dealer.

(xi) 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 the Dealer 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. The Dealer 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 such Dealer 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 such

Dealer arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. The Dealer also understands that the MCO provides that if such Dealer prevails in any such action, such Dealer 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.

If the Dealer 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 such Dealer later enters into an agreement or agreements that cause the contractor to exceed that amount in a fiscal year, the Dealer 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 Dealer and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

(k) Requiring Health Benefits for Covered Employees. Unless exempt, the Dealer 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 herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the web at [www.ci.sf.ca.us/HCAO](http://www.ci.sf.ca.us/HCAO). Capitalized terms used in this Section and not defined in this agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

(ii) Notwithstanding the above, if the Dealer 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.

(iii) The Dealer's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify such Dealer 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, such Dealer fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, such Dealer 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.

(iv) Any Subcontract entered into by the Dealer 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. The Dealer shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the

Purchasing Department 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. The Dealer 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 the Dealer based on the Subcontractor's failure to comply, provided that City has first provided such Dealer with notice and an opportunity to obtain a cure of the violation.

(v) The Dealer shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to such Dealer's compliance or anticipated compliance 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.

(vi) The Dealer 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.

(vii) The Dealer shall keep itself informed of the current requirements of the HCAO.

(viii) The Dealer 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.

(ix) The Dealer 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 (5) business days to respond.

(x) City may conduct random audits of the Dealer to ascertain its compliance with HCAO. The Dealer agrees to cooperate with City when it conducts such audits.

(xi) If the Dealer is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but such Dealer later enters into an agreement or agreements that cause such Dealer'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 the Dealer and the Contracting Department to be equal to or greater than \$75,000 in the fiscal year.

(l) Notification of Limitations on Contributions. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 et. seq., and San Francisco Ethics City Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving 1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; 2) any employment for compensation; or 3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: 1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract;

2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or 3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

The Dealer understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Contractor except as provided under the Conduct Code. The Dealer agrees to notify any other individuals or entities that may be deemed “public benefit recipients” under the Conduct Code because of this contract. Upon request, the Dealer agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official’s compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, the Dealer with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City or the Dealer of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

**Section 20. Term.** The term of this Agreement shall be from the date first written above through \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA,  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

Acknowledged:

\_\_\_\_\_,  
Director of the Office of Public Finance of the  
City and County of San Francisco

By: \_\_\_\_\_

\_\_\_\_\_,  
Controller of the  
City and County of San Francisco

By: \_\_\_\_\_

\_\_\_\_\_.  
Tax I.D.: \_\_\_\_\_

By: \_\_\_\_\_  
Title: Authorized Officer