CITY AND COUNTY OF SAN FRANCISCO

DEPARTMENT OF PUBLIC HEALTH

SOURCING EVENT ID: SFGOV-0000012013

REQUEST FOR PROPOSALS 21-2026

HIV Hospice Care and Mental Health Services

ISSUED: August 25, 2026

TABLE OF CONTENTS

SECTION 1 – NOTICE OF REQUEST FOR PROPOSALS 4
1.1 Request for Proposals: 4
1.2 Contract Term: 4
1.3 Solicitation Schedule: 4
1.4 Procurement Officer and Delivery Address: 4

SECTION 2 – INSTRUCTIONS TO PROPOSERS 5
2.1 Obtaining RFP Documents and Addenda: 5
2.2 Submission of Proposals: 5
2.3 Request for Clarifications/Questions: 6
2.4 Proposer's Minimum Qualifications: 6
2.5 Pre-Proposal Conference: 7

SECTION 3 – TERMS AND CONDITIONS FOR RECEIPT OF PROPOSALS 8
3.1 Local Business Enterprise (LBE) Program Requirements: 8
3.2 Form of Contract: 9
3.3 Responsibility of Proposer: 10
3.4 Public Disclosure: 10
3.5 Limitations on Communications During Solicitation: 11
3.6 Proposal Selection Shall Not Imply Acceptance: 11
3.7 Cybersecurity Risk Assessment: 11
3.8 Solicitation Errors and Omissions: 11
3.9 Objections to Solicitation Terms: 12
3.10 Protest Procedures: 12
3.11 Proposal Term: 13
3.12 Revision to Proposal: 13
3.13 Proposal Errors and Omissions: 13
3.14 Financial Responsibility: 13
3.15 Proposer's Obligations under the Campaign Reform Ordinance: 13
3.16 Reservations of Rights by the City: 14
3.17 No Waiver: 14
3.18 Investigations: 14
3.19 Insurance: 15
3.20 Compliance with Law: 15
3.21 City Nonprofit Supplier Compliance with California Attorney General Registry of Charitable Trusts: 15
3.22 Licenses, Permits, Fees and Assessments: 15
3.23 Right to Accept or Reject Proposals: 15
3.24 Non-Collusion: 15
3.25 Signed Proposal and Exceptions: 16
3.26 Green Purchasing Requirements: 16
3.27 Protected Health Information and Business Associate Agreement 16
3.28 Protected Health Information 16
3.29 Exclusion Lists and Employee Verification 17
3.30 Prevention of Fraud, Waste and Abuse 17
3.31 Participate in DPH Performance Improvement Process (PIP) and Monitoring 17
3.32 Web Content Accessibility Guidelines (WCAG) 2.1 Level AA 17

SECTION 4 – SCOPE OF WORK 18
4.1 Background: 18
4.2 Scope of Work: 18
4.3 Reserved (Schedule): 20
4.4 Compensation: 20

SECTION 5 – PROPOSAL FORMAT AND ORGANIZATION 21

5.1 Proposal Requirements: 21
5.2 Proposal Content: 21

SECTION 6 – PROPOSAL EVALUATION, SELECTION PROCESS AND AWARD OF CONTRACT 24
6.1 Evaluation of Proposals: 24
6.2 Cost Proposal Scoring: 25
6.3 Selection Process: 25
6.4 Award of Contract: 25

SECTION 7 – CITY'S CONTRACT TERMS 26

SECTION 8 – RFP ATTACHMENTS 27
8.1 RFP Attachments: 27

SECTION 1 – NOTICE OF REQUEST FOR PROPOSALS

1.1 Request for Proposals:

The Department of Public Health's HIV Health Services division (hereinafter "City" or "DPH") is issuing this Request for Proposals (hereinafter "RFP" or "Solicitation") to seek proposals (hereinafter "Proposals") from qualified and experienced firms (hereinafter "Proposers") to provide the City with **HIV Hospice Care and Mental Health Services.** These services require a licensed and currently operating Hospice Care facility.

1.2 Contract Term:

The anticipated term of the contract **will be a 5-year term, with 5 one-year options to extend at the City's sole, absolute discretion.** The City reserves the right, at its sole discretion, to modify the anticipated term, including the initial term and any option periods, if it determines such modification serves the City's best interest.

1.3 Solicitation Schedule:

The following is the anticipated schedule for this Solicitation. These dates may be changed at any time as determined by City without liability. The City will implement any date changes to this Solicitation through an authorized written addendum.

Activity	Time	Date
RFP Published		08/25/2026
Pre-Proposal Conference		09/09/2026
Deadline for Questions	5:00PM PT	09/16/2026
Estimated Q&A Addendum Posting		09/23/2026
Deadline to Submit Proposals	**2:00PM PT**	**10/01/2026**
Estimated Announcement of Award		November 2026
Health Commission Presentation (if applicable)		February 2027
Estimated Contract Start Date		03/01/2027

1.4 Procurement Officer and Delivery Address:

Lilian Henriquez

City and County of San Francisco – Department of Public Health – Office of Contract Management and Compliance

101 Grove St., Room 410

San Francisco, CA 94102

Phone: (628) 271-7412

Email: lilian.henriquez@sfdph.org and sfdph.solicitations@sfdph.org

SECTION 2 – INSTRUCTIONS TO PROPOSERS

2.1 Obtaining RFP Documents and Addenda:

A. RFP documents, including addenda, can be found on the San Francisco City Partner website: San Francisco City Partner Event Search

B. Proposers will then need to search the **Sourcing Event ID** listed above for all related documents. It is the Proposer's responsibility to check the San Francisco City Partner website regularly to stay current on the documents that are available as this is the primary communication website for this RFP.

C. The City may modify this Solicitation, prior to the Proposal due date, by issuing an addendum to the Solicitation, which will be posted on the San Francisco City Partner website. Every addendum will create a new version of the sourcing event and Proposers must monitor the event for new versions. The Proposer shall be responsible for ensuring that its Proposal reflects any and all addenda issued by the City prior to the Proposal due date regardless of when the Proposal is submitted. Therefore, the City recommends that the Proposer consult the website frequently, including shortly before the Proposal due date, to determine if the Proposer has downloaded all Solicitation addenda. It is the responsibility of the Proposer to check for any addenda, and updates, which may be posted to the subject Solicitation.

D. The submittal of a response to this Solicitation shall explicitly stipulate acceptance by Proposers of the terms found in this Solicitation, any and all addenda issued to this Solicitation, and the proposed contract terms.

2.2 Submission of Proposals:

A. How to Register as a City Supplier

The following requirements pertain only to Proposers not currently registered with the City as a Supplier.

Step 1: Register as a Bidder on the San Francisco City Partner website: San Francisco City Partner Bidder Registration

Step 2: Follow the step-by-step instructions on SF.gov for converting your Bidder ID to a Supplier ID. This will require you to register with the City Tax Collector's Office and submit the online 12B Declaration for Article 131 (Equal Benefits Program) compliance through the City Partner website. Once these forms have been completed, submitted, and processed, you will be notified via email with your organization's new Supplier ID. That email will also provide instructions for completing your Supplier registration.

1. **City Business Tax Registration Inquiries:** For questions regarding business tax registration procedures and requirements, contact the Tax Collector's Office at (415) 554-4400 or, if calling from within the City and County of San Francisco, 311.
2. **Equal Benefits Program Inquiries:** For questions concerning the San Francisco Labor and Employment Code Articles 131 and 132, visit the San Francisco Contract Monitoring Division website.

B. Time and Place for Submission of Proposals

1. Prior to the Proposal submission deadline, Proposers must upload their complete Proposals to the San Francisco City Partner website.
2. Each original Proposal received will be screened to ensure that all content required by this Solicitation is included. Partial or complete omission of any required content may disqualify Proposal from further consideration. Failure to adhere to the above requirements may result in the complete rejection of your Proposal.

3. Proposers should upload and submit their Proposals to the San Francisco City Partner website as early as possible to allow time for any technical issues. The website will automatically close at the submission deadline, and late Proposals will not be accepted. Uploading a Proposal is not enough, Proposers must press "Submit" before the deadline.

4. Proposals must be received by the due date and time shown in the RFP. Proposals that are submitted by email will not be accepted.

5. Proposals must be submitted through the San Francisco City Partner website. However, if the website is not functioning, Proposers must notify the Procurement Officer listed in Section 1.4 (Procurement Officer and Delivery Address) and provide proof of the issue. In such cases, Proposals may be delivered in person as a backup. The deadline for in-person delivery is the same as the deadline for submission via the San Francisco City Partner website. The City is not responsible for Proposals lost or not delivered by your courier of choice. Courier or package tracking is recommended if you use in-person delivery. If delivering by mail or courier, please email a tracking # (if available) or notice of mailing to the Procurement Officer listed in this RFP.

2.3 Request for Clarifications/Questions:

A. Questions must be submitted by email to the Procurement Officer whose name and contact information listed in Section 1.4 (Procurement Officer and Delivery Address) of this Solicitation no later than the deadline for questions. Questions received after this date and time may not be answered.

B. Only questions that have been resolved by formal written addenda to this Solicitation will be binding. Oral and other interpretations or clarifications will be without legal or contractual effect.

2.4 Proposer's Minimum Qualifications:

Proposers must provide documentation that clearly demonstrates each requirement (hereinafter "Minimum Qualification" or "MQ") listed below has been met. Minimum Qualification documentation should be clearly marked as "MQ1", MQ2", etc.… to indicate which MQ it supports. Each Proposal will be reviewed for initial determination on whether Proposer meets the MQs referenced in this section. This screening is a pass or fail determination and a Proposal that fails to meet the Minimum Qualifications will not be eligible for further consideration in the evaluation process. The City reserves the right to request clarifications from Proposers prior to rejecting a Proposal for failure to meet the Minimum Qualifications.

MQ #	Description
MQ1	Proposer must have at least 5 years of cumulative experience in providing Hospice Care and Mental Health Services to People with HIV. The required experience must be met at the time of Proposal submission. **Third party documentation for this experience must be included in the Proposal. Acceptable third-party documents include contract agreements, Memoranda of Understanding (MOUs), and/or letters of attestation.**
MQ2	Proposer must employ or be able to recruit appropriately licensed or license-eligible staff to perform the services in this solicitation. **Documentation for this requirement must be included in the proposal. Acceptable documentation includes an organizational chart identifying licensed or license-eligible staff and/or the recruitment team with their respective roles, along with a description of recruitment processes used to fill licensed positions.**

2.5 Pre-Proposal Conference:

All Proposers are highly encouraged to attend this conference to learn more about the requirements of this Solicitation.

Pre-Proposal Conference	September 9, 2026 at 2 PM via Microsoft Teams Join by Microsoft Teams Link, copied below for convenience: Microsoft Teams Link Or call in (audio only) +1 415-906-4659,,932911124 United States, San Francisco Phone Conference ID: 932 911 124#

SECTION 3 – TERMS AND CONDITIONS FOR RECEIPT OF PROPOSALS

3.1 Local Business Enterprise (LBE) Program Requirements:

A. Contract Monitoring Division (CMD) Compliance Officer

The CMD Compliance Officer (CCO) for this Solicitation and any contract awarded pursuant to this Solicitation is:

Seth Benkle

Contract Monitoring Division

City and County of San Francisco

Phone: 650-821-7796

Email: Seth.Benkle@sfgov.org

Website: Contract Monitoring Division website

B. Application of LBE Rating Bonuses

LBE Rating Bonuses shall be applicable to each phase of the Solicitation evaluation and selection process, in accordance with the values shown below. For the purposes of Chapter 14B requirements only, and not the final contract amount in any executed contract, the "Estimated Contract Value" for each contract awarded under this RFP is greater than $400,000 but less than or equal to $10,000,000.

1. **Reserved (Commodities)**

2. **General and Professional Services**

Estimated Contract Value	**Small/Micro LBEs Rating Bonus**	**SBA LBEs Rating Bonus**
Greater than $20,000 but less than or equal to $400,000.	10%	0%
Greater than $400,000 but less than or equal to $10,000,000.	10%	5% *So long as it does not adversely affect a Small or Micro-LBE Proposer's participation or, for Professional Services, a JV Proposer's participation.*
Greater than $10,000,000 but less than or equal to $20,000,000.	2%	2%

3. **Professional Services by Joint Ventures**

Estimated Contract Value	**Small/Micro LBE Subcontracting Level**	**Rating Bonus**
Greater than $20,000	Equals or exceeds 35%,	5%

Estimated Contract Value	Small/Micro LBE Subcontracting Level	Rating Bonus
but less than or equal to $10,000,000.	but less than 40%	
	Equals or exceeds 40%, but less than 100%	7.5%
	100%	10%

If applying for an LBE rating discount as a Joint Venture (JV), the Micro and /or Small-LBE must be an active partner in the JV 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 JV. The portion of the Micro and/or Small-LBE JV's work shall be set forth in detail separately from the work to be performed by the non-LBE JV. The Micro and/or Small-LBE JV's portion of the contract must be assigned a commercially useful function.

4. Sample Rating Bonus Calculations

ABC Firm Price Proposal Attributes • Is a Certified Micro LBE	**Possible Maximum Score**	**14B LBE Rating Bonus (2%)**	**Evaluated Total Score**
Minimum Qualifications	Pass	N/A	N/A
Technical Proposal	80	1.6	81.6
Cost Proposal	20	0.4	20.4
Interview	25	0.5	25.5
Total	125	2.5	127.5

C. LBE Subcontracting Participation Requirements

There shall be no LBE Subcontracting Requirement for any contract awarded pursuant to this Solicitation because the LBE Subcontracting Requirements were waived by the Contract Monitoring Division under Waiver No. 14BPREBID0003019.

D. CMD LBE Forms

Failure to complete, sign and submit each of the required CMD LBE Forms with Proposal may result in the submission being deemed non-responsive and rejected.

Although LBE Subcontracting Participation Requirements do not apply to contracts awarded under this Solicitation, any Proposer that is a certified LBE must still complete and submit Attachment E (CMD LBE Form 2A).

3.2 Form of Contract:

A. The selected Proposer will be required to enter into a contract substantially in the form presented in Attachment M (City's Contract Terms). Please note that the exhibits are intentionally not complete in the attached sample standard document. These exhibits will be conformed to reflect any changes made through the Solicitation process and will appear in the final Professional Services contract executed between the parties.

B. Failure or refusal to enter into a contract as herein provided or to conform to any of the stipulated requirements in connection therewith shall be just cause for an annulment of the award. If the highest scoring Proposer refuses or fails to execute the contract, or the contract is terminated, the City may, at its sole discretion, enter in contract with and award the contract to the second highest scoring Proposer, and so on.

3.3 Responsibility of Proposer:

A. Qualification of Proposers

The selected Proposer must possess all qualifications required for the contract and be capable of performing the work for which the Proposer is being called. If applicable, the successful Proposer and/or Proposer's staff must be properly licensed and/or certified according to the requirements outlined in this Solicitation and remain in good standing for the duration of the contract. Any failure to demonstrate satisfaction of one or more of the requirements, if requested by the City, will be considered sufficient for the disqualification of the Proposer as non-responsive and will entitle the City to terminate negotiations and move to the next highest-scoring Proposer for contract award.

B. Notice of Intent to Award – Required Documentation

After the City issues a Notice of Intent to Award and prior to contract award, the selected Proposer must be registered and in good standing with the government entities listed below and is solely responsible for ensuring that its legal name, including any DBA, is accurate, consistent, and identical across all registrations, filings, and submitted documents, and exactly matches the legal name provided to the City. Any discrepancies must be corrected, including updating registrations or records as needed, within ten calendar days of the issuance of the Notice of Intent to Award. Failure to demonstrate compliance or begin correcting any discrepancies within the ten-calendar day period may result in the Proposer being deemed nonresponsive. Failure to remain in good standing for the duration of the contract will entitle the City to immediately terminate the contract for default, with no opportunity to cure.

1. Proposer is in good standing with the California Secretary of State;
2. Proposer is in good standing with the Franchise Tax Board;
3. Proposer is in good standing with the Internal Revenue Service;
4. Proposer (if a non-profit) is in good standing with California Attorney General's Registry of Charitable Trusts per the City's Policy and Procedures regarding City Nonprofit Supplier Compliance with California Attorney General Registry of Charitable Trusts;
5. Office of Foreign Assets Control (OFAC) – applicable to state funded contracts;
6. System for Award Management (SAM) – applicable to federally funded contracts.

3.4 Public Disclosure:

A. All documents under this Solicitation process are subject to public disclosure per the California Public Records Act (California Government Code Section §6250 et. Seq) and the San Francisco Sunshine Ordinance (San Francisco Administrative Code Chapter 67). contracts, Proposals, responses, and all other records of communications between the City and Proposers shall be open to inspection immediately after a contract has been awarded. Nothing in this Administrative Code 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.

B. If the City receives a Public Records Request ("Request") pertaining to this Solicitation, City will use its best efforts to notify the affected Proposer(s) of the Request and to provide the Proposer with a description of the material that the City deems responsive and the due date for disclosure ("Response Date"). If the Proposer asserts that some or all of the material requested contains or reveals valuable trade secret or other information belonging to the Proposer that is exempt from disclosure and directs the City in writing to withhold such material from production ("Withholding Directive"), then the City will comply with the Withholding Directive on the condition that the Proposer seeks judicial relief on or before the Response Date. Should Proposer fail to seek judicial relief on or before the Response Date, the City shall proceed with the disclosure of responsive documents.

3.5 Limitations on Communications During Solicitation:

From the date this Solicitation is issued until the date the competitive process of this Solicitation is completed (either by cancelation or issuance of Notice of Intent to Award), Proposers and their subcontractors, vendors, representatives and/or other parties under Proposer's control, shall communicate solely with the Procurement Officer whose name appears in this Solicitation. Any attempt to communicate with any party other than the Procurement Officer whose name appears in this Solicitation – including any City official, representative or employee – is strictly prohibited. Failure to comply with this communications protocol may, at the sole discretion of City, result in the disqualification of the Proposer or potential Proposer from the competitive process. This protocol does not apply to communications with the City regarding business not related to this Solicitation.

3.6 Proposal Selection Shall Not Imply Acceptance:

The acceptance and/or selection of any Proposal shall not imply acceptance by the City of all terms of the Proposal, which may be subject to further approvals before the City may be legally bound thereby.

3.7 Cybersecurity Risk Assessment:

A. As part of City's evaluation process, City may engage in Cybersecurity Risk Assessment (CRA). CRA may be performed for each entity manufacturing the product, performing technical functions related to the product's performance, and/or accessing City's networks and systems. Where a prime Proposer or reseller plays an active role in each of these activities, CRA may also be required for the prime Proposer or reseller.

B. To conduct a CRA, City may collect as part of this Solicitation process one of the following two reports:

1. **SOC-2 Type 2 Report:** Report on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality or Privacy; or
2. **City's Cyber Risk Assessment Questionnaire:** Proposer's responses to a City's Cyber Risk Assessment Questionnaire.
3. The above reports may be requested at such time City has selected or is considering a potential Proposer. The reports will be evaluated by the soliciting Department and the City's Department of Technology to identify existing or potential cyber risks to City. Should such risks be identified, City may afford a potential Proposer an opportunity to cure such risk within a period of time deemed reasonable to City. Such remediation and continuing compliance shall be subject to City's on-going review and audit through industry-standard methodologies, including but not limited to: on-site visits, review of the entities' cybersecurity program, penetration testing, and/or code reviews.

3.8 Solicitation Errors and Omissions:

Proposers are responsible for reviewing all portions of this Solicitation. Proposers are to promptly notify the City, in writing and to the Procurement Officer if the Proposer discovers any ambiguity, discrepancy, omission, or other error in the Solicitation. Any such notification should be directed to the City promptly after discovery, but in no event later than the deadline for questions. Modifications and clarifications will be made by addenda.

3.9 Objections to Solicitation Terms:

Should a Proposer object on any ground to any provision or legal requirement set forth in this Solicitation, the Proposer must, no later than the deadline for questions, provide written notice to the City setting forth with specificity the grounds for the objection. The failure of a Proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

3.10 Protest Procedures:

A. Protest of Solicitation Content

Any Proposer who contends that the terms, conditions, or specifications of this Solicitation are unduly restrictive, improperly limit competition, or appear to be written in a manner that favors a particular vendor, may submit a written protest of the Solicitation content. Such protest must be received by the City no later than the deadline for submission of questions as set forth in the Solicitation schedule. The written protest must clearly identify each allegedly restrictive specification, explain in detail why the specification is deemed restrictive or biased, and include all supporting facts, evidence, and any applicable law, rule, ordinance, or procedure. The protest must be signed by an individual authorized to represent the Proposer. Failure to submit a timely protest will be deemed a waiver of the Proposer's right to challenge the content of the Solicitation.

B. Protest of Non-Responsiveness Determination

Within three business days of the City's issuance of a Notice of Non-Responsiveness, a Proposer may submit a written Notice of Protest of Non-Responsiveness. The Notice of Protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The Notice of Protest must be signed by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or Solicitation provision on which the protest is based. In addition, the Notice of Protest must specify facts and evidence sufficient for the City to determine the validity of the protest.

C. Protest of Non-Responsible Determination

Within three business days of the City's issuance of a Notice of Non-Responsibility, a Proposer may submit a written Notice of Protest of Non-Responsibility. The Notice of Protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The Notice of Protest must be signed by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or Solicitation provision on which the protest is based. In addition, the Notice of Protest must specify facts and evidence sufficient for the City to determine the validity of the protest.

D. Protest of Contract Award

Within three business days of the City's issuance of a Notice of Intent to Award, a Proposer may submit a written Notice of Protest of Contract Award. The Notice of Protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The Notice of Protest must be signed by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or Solicitation provision on which the protest is based. In addition, the Notice of Protest must specify facts and evidence sufficient for the City to determine the validity of the protest. Please note that a disagreement with how an individual evaluator scored a Proposal does not constitute valid grounds for a protest.

E. Delivery of Protests

A Notice of Protest must be delivered to the Procurement Officer whose name and contact information appears in this Solicitation, and to My Lan Do Nguyen, Manager of Contractual Pre-Award, at mylando.nguyen@sfdph.org. A Notice of Protest must be written; protests made orally (e.g., by telephone) will not be considered. It must be transmitted by a means that will objectively establish the date the City received the Notice of Protest, and received by the due dates stated above. If a Notice of Protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein.

3.11 Proposal Term:

Submission of a Proposal signifies that the proposed products, services and prices are valid for 180 calendar days from the Proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity. At Proposer's election, the Proposal may remain valid beyond the 180-day period. The City reserves the right to award additional contracts under this Solicitation if additional funding becomes available or programmatic needs change. Such awards may be made to Proposers that submitted Proposals in response to this Solicitation, whether or not they were selected for an initial award, provided the Proposers met the Minimum Qualifications and their Proposals were determined to be responsive. Any additional awards must occur during the initial contract term identified in Section 1.2 (Contract Term) of this Solicitation (excluding any options to extend) and will be limited to the scope of services, products, and pricing proposed by the Proposers as of the deadline identified in Section 1.3 (Solicitation Schedule) as the "Deadline to Submit Proposals".

3.12 Revision to Proposal:

A Proposer may revise a Proposal on the Proposer's own initiative at any time before the deadline for submission of Proposals. The Proposer must submit the revised Proposal in the same manner as the original. A revised Proposal must be received on or before, but no later than the Proposal due date and time. In no case will a statement of intent to submit a revised Proposal, or commencement of a revision process, extend the Proposal due date for any Proposer. At any time during the Proposal evaluation process, the City may require a Proposer to provide oral or written clarification of its Proposal. The City reserves the right to make an award without further clarifications of Proposals received.

3.13 Proposal Errors and Omissions:

Failure by the City to object to an error, omission, or deviation in the Proposal will in no way modify the Solicitation or excuse the Proposer from full compliance with the specifications of this Solicitation or any contract awarded pursuant to this Solicitation.

3.14 Financial Responsibility:

The City accepts no financial responsibility for any costs incurred by a Proposer in responding to this Solicitation. Proposers acknowledge and agree that their submissions in response to this Solicitation will become the property of the City and may be used by the City in any way deemed appropriate.

3.15 Proposer's Obligations under the Campaign Reform Ordinance:

A. If a contract awarded pursuant to this Solicitation has (A) a value of $100,000 or more in a fiscal year and (B) requires the approval of an elected City official, Proposers are hereby advised:

B. Submission of a Proposal in response to this Solicitation may subject the Proposers to restrictions under Campaign and Governmental Conduct Code Section 1.126, which prohibits City Contractors, Proposers, and their affiliates from making political contributions to certain City elective officers and candidates; and

C. Before submitting a Proposal in response to this Solicitation, Proposers are required to notify their affiliates and subcontractors listed in the awarded contract or Proposal of the political contribution restrictions set forth in Campaign and Governmental Conduct Code section 1.126.

D. This restriction applies to the party seeking the contract, the party's board of directors, chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest greater than 10%, and any political committees controlled or sponsored by the party, as well as any subcontractors listed in the awarded contract or Proposal. The law both prohibits the donor from giving contributions and prohibits the elected official from soliciting or accepting them.

E. The people and entities listed in the preceding paragraph may not make a campaign contribution to the elected official at any time from the submission of a Proposal for a contract until either: (1) negotiations are terminated and no contract is awarded; or (2) twelve months have elapsed since the award of the contract.

F. A violation of Section 1.126 may result in criminal, civil, or administrative penalties. For further information, Proposers should contact the San Francisco Ethics Commission at (415) 252-3100 or visit the San Francisco Ethics Commission website.

3.16 Reservations of Rights by the City:

The issuance of this Solicitation does not constitute a guarantee by the City that a contract will be awarded or executed by the City. The City expressly reserves the right at any time to:

1. Waive or correct any defect or informality in a Proposal or in the Proposal submission procedure;
2. Reject any or all Proposals;
3. Reissue the Solicitation;
4. Prior to submission deadline for Proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this Solicitation, or the requirements for contents or format of the Proposals;
5. Procure any materials, equipment or services specified in this Solicitation by any other means; or
6. Determine that the subject goods or services are no longer necessary.

3.17 No Waiver:

No waiver by the City of any provision of this Solicitation shall be implied from the City's failure to recognize or take action on account of a Proposer's failure to comply with this Solicitation.

3.18 Investigations:

C. The City may make such investigation, as it deems necessary, prior to the award of this contract to determine the conditions under which the goods are to be delivered or the work is to be performed. Factors considered by the City shall include, but not be limited to:

   1. Any condition set forth in this Solicitation;
   2. Adequacy of Proposer's plant facilities and/or equipment, location and personnel location to properly perform all services called for under the Purchase Order; and
   3. Delivery time(s).

D. City reserves the right to inspect an awarded Proposer's place of business prior to award of and/or at any time during the contract term (or any extension thereof) to aid City in determining an awarded Proposer's capabilities and qualifications.

E. Failure to timely execute a contract, or to furnish any and all insurance certificates and policy endorsements, surety bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another Proposer and may proceed against the original selectee for damages.

F. City reserves the right to reject any Proposal on which the information submitted by Proposer fails to satisfy City and/or if Proposer is unable to supply the information and documentation required by this Solicitation within the period of time requested.

G. Any false statements made by a Proposer or any related communication/clarification may result in the disqualification of its Proposal from receiving further evaluation and a contract award.

3.19 Insurance:

Insurance provisions are contained in Attachment M (City's Contract Terms) included in the Solicitation. The successful Proposer will be required to comply with these provisions. It is recommended that Proposers have their insurance provider review the insurance provisions before they submit their Proposal.

3.20 Compliance with Law:

Proposer warrants that all services rendered shall be performed in accordance with all applicable federal, state, and local laws, statutes, ordinances, lawful orders, rules, and regulations.

3.21 City Nonprofit Supplier Compliance with California Attorney General Registry of Charitable Trusts:

Nonprofit Proposers are required to review the City's Policy and Procedures regarding City Nonprofit Supplier Compliance with California Attorney General Registry of Charitable Trusts. To receive a contract under this Solicitation, any nonprofit Proposer must be in good standing with the California Attorney General's Registry of Charitable Trusts by the time of contract execution and must remain in good standing during the term of the contract. Upon request, Proposer must provide documentation to the City demonstrating its good standing with applicable legal requirements. If Proposer will use any nonprofit subcontractors to perform the contract, Proposer will be responsible for ensuring they are also in compliance with all requirements of the Attorney General's Registry of Charitable Trusts at the time of contract execution and for the duration of the contract.

3.22 Licenses, Permits, Fees and Assessments:

Proposer represents and warrants to City that it will obtain all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the work and services requested in this Solicitation. Proposer represents and warrants to City that Proposer shall, at its sole cost and expense, keep in effect at all times during the term of the contract if so awarded, any license, permit, qualification, or approval that is legally required for Proposer to perform the work and services under the contract if so awarded. Proposer shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties, and interest, which may be imposed by law and arise from or are necessary for the Proposer's performance of the work and services required under the contract if so awarded. Proposer shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against City to the fullest extent permitted by law.

3.23 Right to Accept or Reject Proposals:

The City reserves the right to waive any informality or technical defect in a Proposal and to accept or reject, in whole or in part, any or all Proposals and to cancel all or part of this Solicitation and seek new Proposals, as best serves the interests of the City. The City furthermore reserves the right to contract separately with others certain tasks if deemed in the best interest of the City.

3.24 Non-Collusion:

The undersigned, by submission of Proposal, hereby declares that the Proposal is made without collusion with any other business making any other Proposal, or which otherwise would make a Proposal.

3.25 Signed Proposal and Exceptions:

Submission of a signed Proposal will be interpreted to mean that the firm responding to this RFP has hereby agreed to all the terms and conditions set forth in the Solicitation, and any attached sample contract. Exceptions to any of the language in either the Solicitation documents or attached sample contract, including the insurance requirements, must be requested under the request for clarifications/questions process by the deadline for questions. Any requested changes to the contract will be considered at that time and if changes are allowed, they will be sent out through an addendum to all Proposers. Exceptions to the City's Solicitation document or standard boilerplate language, insurance requirements, terms, or conditions, etc. may only be considered during the early stage of the Solicitation process; and shall not be included in the submitted Proposals. The City makes no guarantee that any exceptions will be approved but will consider any requests put forward in the request for clarification/question process.

3.26 Green Purchasing Requirements:

Prior to submitting any Proposal to this Solicitation, Proposers are required to review the City's Mandatory Green Purchasing Requirements to ensure that all goods and services offered to the City pursuant to this Solicitation comply with the City's Green Purchasing Requirements. Proposers are further encouraged to refer to Attachment M (City's Contract Terms) for additional details regarding the Green Purchasing Requirements applicable to any contract awarded pursuant to this Solicitation.

3.27 Protected Health Information and Business Associate Agreement

The City is a Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and must comply with the HIPAA Privacy Rule governing the access, use, disclosure, transmission, and storage of protected health information (PHI), and with the Security Rule under the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act").

A Business Associate Agreement (BAA) applies to this Solicitation if the services described will require Proposer to do one or more of the following:

A. Create, receive, maintain, or transmit PHI for or on behalf of City/DPH (including storage of PHI, digital or hard copy, even if Proposer does not view the PHI or only does so on a random or infrequent basis); or

B. Receive PHI, or access to PHI, from City/DPH or another Business Associate of City, as part of providing a service to or for City/DPH, including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial; or

C. Transmit PHI data for City/DPH and require access on a regular basis to such PHI, (such as health information exchanges (HIEs), e-prescribing gateways, or electronic health record vendors).

If any of the above apply, Proposer will be a Business Associate of City/DPH as defined under HIPAA. The DPH Business Associate Agreement will automatically become part of any resulting contract, and Proposer must comply with its terms.

If none of the above apply, Proposer will not be a Business Associate of City/DPH, and the DPH Business Associate Agreement will not apply to any resulting contract.

3.28 Protected Health Information

Proposer, and any subcontractors, agents, and employees of Proposer or its subcontractors, must comply with all federal and state laws governing the transmission, storage, and protection of private health information disclosed by City in the performance of any resulting contract. Any

failure to comply with federal, state, or local privacy laws will be a material breach of the contract. If City pays a regulatory fine or is assessed civil penalties or damages through private rights of action based on an impermissible use or disclosure of protected health information given to Proposer or its subcontractors or agents by City, Proposer will indemnify City for the amount of such fine, penalties, or damages, including notification costs. In addition to any other remedies available under equity or law, City may terminate the contract in such an event.

3.29 Exclusion Lists and Employee Verification

Upon hire and monthly thereafter, Proposer must check the exclusion lists published by the Office of the Inspector General (OIG), General Services Administration (GSA), and the California Department of Health Care Services (DHCS) to confirm that no employee, temporary employee, volunteer, consultant, or governing body member responsible for overseeing, administering, or delivering state or federally funded services appears on these lists. Anyone on an exclusion list may not work on the program or with the agency. Proposer must retain proof of these checks for seven years.

3.30 Prevention of Fraud, Waste and Abuse

Proposer must comply with all laws designed to prevent fraud, waste, and abuse, including provisions of state and federal law applicable to healthcare providers and transactions, such as the False Claims Act (31 U.S.C. § 3729 et seq.), the Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Physician Self-Referral Law (Stark Law, 42 U.S.C. § 1395nn), and California Business & Professions Code § 650. Proposer must immediately notify City of any suspected fraud, waste, or abuse under state or federal law.

3.31 Participate in DPH Performance Improvement Process (PIP) and Monitoring

DPH requires vendors to participate in periodic and annual review of the contract deliverables. DPH will work with the Proposer to select appropriate measurable data to use as a measure of satisfactory delivery of the service or products. This may include delivering various reports or data periodically to DPH.

3.32 Web Content Accessibility Guidelines (WCAG) 2.1 Level AA

If the technology to be procured under this Solicitation will be public facing (i.e., members of the public will use it to learn about, apply for, pay for, or otherwise access City services or information), the following requirements apply: A Proposer selected pursuant to this Solicitation shall adhere to the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sec. 1201 et seq.), including the Web Content Accessibility Guidelines (WCAG) 2.1, Level AA, as specified in the Department of Justice's Title II Rule on the accessibility of web content and mobile applications. The awarded Proposer shall ensure that all information content and technology provided under the resulting contract fully conforms to the Department of Justice's Title II rules and, where applicable, the applicable Revised 508 Standard, prior to delivery and before the City's final acceptance of the services and/or deliverables.

SECTION 4 – SCOPE OF WORK

4.1 Background:

The Department of Public Health's HIV Health Services division (hereinafter "City" or "DPH") is issuing this Request for Proposals (hereinafter "RFP" or "Solicitation") to seek proposals (hereinafter "Proposals") from qualified and experienced firms (hereinafter "Proposers") to provide the City with **HIV Hospice Care and Mental Health Services.** These services require a licensed and currently operating Hospice Care facility.

4.2 Scope of Work:

A. **Target Population/Priority Population.**

1. HIV Hospice Care and Mental Health Services are for HIV-positive San Francisco residents with a demonstrated need ("Residents").
2. Residents include, but are not limited to, the following:
    a. Uninsured and/or under-insured,
    b. Experiencing homelessness and/or marginally housed,
    c. Low income (below 600% of the HHS Poverty Guidelines) or no income, and
    d. Multi-diagnosed (HIV, substance use, mental health and/or other co-morbidities).

B. **Hospice Care Requirements.** The Contractor must:

1. Provide nursing care and supportive health services to maintain daily living and improve end-stage quality of life for Residents with the goal of reducing unnecessary hospitalizations.
2. Provide a licensed and currently operating Hospice Care facility that is easily accessible by public transportation for Residents. The facility must include, but is not limited to, the following:
    a. Attendant Care,
    b. Counseling,
    c. Nursing Care,
    d. Palliative Therapeutics,
    e. Physician Services,
    f. Psycho-Social Services, and
    g. Room and Board.
3. Provide Hospice Care in accordance with the SFDPH's San Francisco Eligible Metropolitan Area (EMA) Ryan White HIV Hospice Standards of Care.

C. **Professional Resident Care.** The Contractor must:

1. Intake Residents by providing assessment of psychiatric, substance use, behavioral health, medication, and palliative needs.
2. Create an Individualized Service Plan (ISP) for each Resident by a multidisciplinary care team.
3. Provide Registered Nurse (RN) Case Management, Social Work Case Management, 24-hour RN On-Call Support, and 24-hour Licensed Vocational Nurse (LVN) Care with the appropriate supervisory and support staff to effectively manage these services. Staff may include the following:

a. Social Workers,

b. Certified Nursing Assistants,

c. Registered Nurses,

d. Licensed Vocational Nurses (LVN),

e. Medical Doctors (MD),

f. Physical Therapists,

g. Occupational Therapists,

h. Licensed Clinical Social Workers (LCSW),

i. Licensed Marriage and Family Therapists (LMFT),

j. Clinical Psychologists,

k. Psychiatrists,

l. Interns under the supervision of a licensed Master's level or higher mental health professional.

D. **Paraprofessional Resident Care.** The Contractor must:

1. Provide 24-hour attendant care with the appropriate supervisory and support staff to effectively manage these services. Staff may include, but is not limited to, the following:

   a. Certified Nursing Assistants,

   b. Licensed Vocational Nurses (LVN),

   c. Home Health Aides,

   d. Home Care Aides.

E. **Mental Health Services.** The Contractor must:

1. Provide assessments, develop Individualized Service Plans (ISP) in partnership with Residents, tailor interventions to Residents, complete treatment plans, and complete safe and appropriate discharge plans when needed.

2. Provide flexible arrangement of scheduled and unscheduled individual and group mental health services for Residents wanting or needing Mental Health Services.

   a. Group services will support ISP goals while creating connections and opportunities for supportive relationships within the residential facility.

   b. Services must utilize and present crisis, short-term, and ongoing therapeutic interventions from the Cognitive Behavioral Therapy model.

3. Provide weekly meetings with each Resident.

4. Provide supportive counseling to Resident's family, friends, and support network.

F. **Mental Health Services Objectives.** The Contractor must meet the following:

1. Greater or equal to 90% of Residents identified by a licensed mental health professional as having severe impairment related to substance use and/or mental health history will be assessed for behavioral health needs and referred to MH Services within 15 days of admission/intake to facility.

2. 100% of Residents will have an ISP developed within 2 weeks of admission to the facility and the ISP will be evaluated weekly.

3. 100% of Residents will have comprehensive mental health reevaluation every 3 months to assess crisis stabilization, minimization of psychiatric/mental health symptoms, and the ISP will be updated as needed.

4. 100% adherence for Residents prescribed psychotropic medication(s).

G. **Funding Information.**

1. HIV Hospice Care and Mental Health Services are funded by but is not limited to: Health Resources & Services Administration (HRSA) HIV/AIDS Bureau (HAB) Ryan White Part A and California Office of AIDS Ryan White Part B.

2. Ryan White Part A and Part B funds may only be used for services that are not reimbursed by any other source of federal, state, or private funds.

3. In accordance with Ryan White HIV/AIDS Program requirements, services are to be provided by public or nonprofit entities or by private for-profit entities if they are the only available provider of quality HIV care in the area.

4.3 Reserved (Schedule):

4.4 Compensation:

A. Price.

Work will be compensated on a fixed-fee basis as specified in the Agreement. The fixed fee includes all labor, expenses, and incidentals necessary to complete the work outlined in the Agreement scope. The Contractor may request payments based on a schedule or milestones defined in the Agreement. No additional compensation will be due by the City unless the Agreement is modified for additional work requested by the City.

B. Price Adjustment.

If the Contractor is a for-profit firm, the pricing will remain fixed for the initial five years of the Agreement term. For any subsequent optional years, the Contractor may request a price adjustment. The adjustment may not exceed the percentage change in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-Hayward, California region, as published by the U.S. Bureau of Labor Statistics, for the 12-month period immediately preceding the anniversary date of the Agreement. All price adjustments and optional renewal terms are subject to the mutual written agreement of the City and the Contractor.

If the Contractor is a nonprofit firm, the pricing will remain fixed for the first year of the Agreement term. Price adjustments shall follow the "Guidance to Departments on the Treatment of the Cost-of-Living Adjustment (COLA) and Cost of Doing Business (CODB) Allocation within Nonprofit Contracts and Grants" issued annually by the City Controller's Office, based on the City's approved budget for each fiscal year. In addition, contract rates or contract value may be adjusted due to changes in federal, state, or local policy, or based on funding availability. All adjustments must be approved by the City and will be made only if consistent with the goals and scope of the Agreement.

SECTION 5 – PROPOSAL FORMAT AND ORGANIZATION

5.1 Proposal Requirements:

A. Proposers should describe the methodology to be used to accomplish the project objectives. The Proposal should also describe the work necessary to satisfactorily complete the requirements outlined in Section 4 (Scope of Work).

B. This Solicitation cannot identify each specific, individual task required to implement this project successfully and completely. The City relies on the professionalism and competence of the Proposer to be knowledgeable of the general areas identified in the scope of work and to include in its Proposal all required tasks and subtasks, personnel commitments, man-hours, direct and indirect costs, etc.

C. The Proposals must be in an 8 ½ X 11 format, minimum 10pt font size, minimum ¾" margins, and may be no more than a total of 25 electronic pages, *including* cover letters, organization charts, staff resumes, and appendices.

D. Front and back covers, section dividers, MQ third-party documentation, mandatory form attachments, and the Cost Proposal do not count toward the Proposal page limit. All other content does count towards the page limit.

5.2 Proposal Content:

A. Proposers must address the information identified below. All such information shall be presented in a format that directly corresponds to the numbering scheme identified here. The City reserves the right to deem any Proposal that does not follow the requirements below non-responsive.

B. Each Proposal submission must include three separate electronic files as follows:

1. Electronic File #1: Technical Proposal

The file must be clearly marked "RFP212026ProposerNameTechProposal." It must be submitted as a single PDF and shall include all items listed in Content A, B, and C. Content must appear in order from A through C, with all required items included.

Content A: Firm (including any subcontractors) Qualifications and Experience including References

A.1 Firm Overview. Please provide a description of the services that your firm has provided in San Francisco or other jurisdictions, how long your firm has been in operation, and any unique features of the services your firm offers.

A.2 Prior City Work. If your firm has prior experience working with the City, do not assume this prior work is known to all members of the evaluation panel. All firms are evaluated on the information contained in their Proposal, information obtained from references (including the City and past performance, if applicable), and interviews if requested. All Proposals should be prepared as if the evaluation panel members have no knowledge of the firm, their qualifications, or past projects.

A.3 Subcontractors. Please identify any subcontractor firms or contractors that will be used to implement the scope of work. Describe each firm's qualifications, background, and specific expertise relevant to the services.

A.4 References. In addition to completing Attachment C (Reference Form), please use this section to share any additional information about the work you did with those references that is relevant to the services described in this RFP. As part of the evaluation, DPH will contact the references listed in your Attachment C to ask about your firm's past work, then compile their responses and share them with the evaluation panel. References are generally asked to reply within three calendar days of our request. It is your responsibility to make sure the contacts you provide are

current, reachable, and willing to speak with us. DPH must receive responses from all your references.

A.5 Performance Evaluations. Provide one performance evaluation report following the preference numbered below. The evaluation report offers insight into the Contractor's most recent service quality performance. The report does not count toward the page limit.

1. If you have/had a contract with DPH, provide the most recent DPH Contract Monitoring Report.
2. If you have/had a contract with other departments in the City, provide the most recent evaluation report.
3. If you have not had a contract with the City and County of San Francisco, provide the most recent funder evaluation report for the contracted services.

Content B: Staff, Teams (including any subcontractors) Qualifications and Experience

B.1 Staffing. Please provide a description of how your firm plans to staff the contract, including any local hires that you would need to make or local partnerships that you would need to establish to ensure successful fulfillment of the contract requirements and tasks.

B.2 Key Staff Qualifications. Please list the name and qualifications of the key staff/team members that will be assigned to the contract. If applicable, provide detailed qualifications of the manager that will be assigned to the project.

B.3 Partners. Please list any organizations your firm plans to partner with to implement the scope of work.

Content C: Demonstrated Understanding of the Overall Project and Requested Scope of Work

C.1 Proposed approach for implementing the scope of work. Please describe how your firm plans to approach the scope of work for the City. This would include how your firm would address or enhance the tasks in the scope of work and how you would partner with the City to implement the service. Provide any insights or advice that may assist the City in implementing the scope of work.

C.2 Anything else the City should consider as part of this process. Proposers should provide any insights or advice they feel may assist the City in implementing the scope of work.

C.3 Identify any "key" or "critical" issues that you believe may be encountered based on the firm's prior experiences; and provide steps to be taken to ensure the issues identified do not affect the successful delivery of the service.

2. Electronic File #2: Minimum Qualifications and Mandatory Forms

The file must be clearly marked "RFP212026ProposerNameMQsForms." It must be submitted as a single PDF and content must appear in the order listed below, with all required items included.

Content D: Minimum Qualifications

D.1 Provide a written explanation of how the firm meets the Minimum Qualifications. Describe how the services shown in your submitted documents are the same as, or substantially similar to, the services described in this Solicitation.

D.2 Provide third party documentation to prove that your firm meets the Minimum Qualifications described in Section 2.4. Acceptable third-party documents include

contracts or letters of attestation from customers. Contracts must be fully executed, include the beginning and end dates of the services provided, and for ongoing services, must include the start date and clearly indicate that the services are current. These dates must be easily identifiable within the document or clearly highlighted by the Proposer. Letters of attestation must be signed by the customer and must also include the period of performance. These documents do not count toward the Proposal page limit.

Content E: The forms are located in the "Mandatory Forms" zip archive, available for download on the San Francisco City Partner website.

A. Attachment A (Contact Information Cover Sheet)

B. Attachment B (Non-Collusion Affidavit Form)

C. Attachment C (Reference Form)

D. Attachment D (12L Compliance)

E. Attachment E (CMD LBE Form 2A)

F. Attachment F (Minimum Compensation Ordinance (MCO) Declaration)

G. Attachment G (Health Care Accountability Ordinance (HCAO) Declaration)

H. Attachment H (First Source Workforce Projection Form and Fact Sheet)

3. Electronic File #3: Cost Proposal

The file must be clearly marked "RFP212026ProposerNameCostProposal." It must be submitted as an Excel file. Do not include contents from Electronic File #1 and #2.

Content F: Cost Proposal

A. Proposers must use Attachment I (Cost Proposal Form) in this RFP.

B. The Cost Proposal shall be based on Section 4.4 (Compensation), above, and must be inclusive of all costs to perform the scope of work. Failure to use the Cost Proposal Form provided by the City will be cause for rejection of a Proposal. Cost Proposals will be evaluated by utilizing the method outlined in Section 6.2 (Cost Proposal Scoring).

SECTION 6 – PROPOSAL EVALUATION, SELECTION PROCESS AND AWARD OF CONTRACT

6.1 Evaluation of Proposals:

A. This Solicitation has been developed in the best value format. Accordingly, Proposers should take note that multiple factors as identified in the Solicitation will be considered by the evaluation panel to determine which Proposal best meets the requirements set forth in the Solicitation document. Price alone will not be the sole determining criteria.

B. An evaluation panel, using the following evaluation criteria for this RFP, will evaluate all responsive Proposals to this Solicitation. Proposers are requested to submit their Proposals so that they correspond to and are identified with the following specific evaluation criteria as outlined in Section 5.2:

Evaluation Criteria	Points
Minimum Qualifications	Pass/Fail
Section 5.2 Content A: Firm's (including any subcontractors) qualifications and experience in providing similar services as defined in the RFP, including References	20
Section 5.2 Content B: Staff or Team's (including any subcontractors) qualifications and experience in providing similar services as defined in the RFP	25
Section 5.2 Content C: Demonstrated understanding of the overall project and requested scope of work	35
Section 5.2 Content F: Cost Proposal	20
Total Points**	**100**
Application of LBE Rating Bonuses***	See Section 3.1.B

****Interviews –** The City reserves the right to interview a subset of top-scored Proposers, based on a natural break in the evaluation scores. A natural break is defined as a clear point in the scoring distribution where there is a significant gap between the scores of higher-ranked Proposers and the next group of lower-ranked Proposers. The intent is to ensure that only the most competitive Proposers advance to the interview stage. If interviews are required, the Proposers invited to interview will be notified in advance and provided a format and time for the interviews. An additional 25 points will be used to score the interview based on the same criteria listed in the RFP. The 25 points will be prorated in the same proportion as the Proposal scoring listed in the table above.

*****LBE Rating Bonuses –** If applicable, a Contract Monitoring Division (CMD) Contract Compliance Officer will assess Proposal compliance with Local Business Enterprise (LBE) requirements and assign a rating bonus to Proposal scores. The CMD-adjusted scores (if applicable) will then be tabulated and used to determine each Proposer's final score. LBE Rating Bonuses shall be applicable to each phase of the Solicitation evaluation and selection process, in accordance with the values shown in Section 3.1.B (Application of LBE Rating Bonuses).

C. **Best and Final Offers –** The City reserves the right to ask for best and final offers where costs are over budget.

D. **Tie Breaker –** The following criteria shall be applied to resolve tied scores:

1. A San Francisco Proposer receives consideration over an out-of-town Proposer.
2. A California Proposer receives consideration over an out-of-state Proposer.
3. As a final resort, the Procurement Officer may randomly select a name by drawing with a second City representative present to witness the process. Proper documentation of the selection and award will be kept on file.

6.2 Cost Proposal Scoring:

Cost Proposals will be evaluated by the evaluation panel based on the following:

1. Proposed operating expenses are reflective of the proposed scope of work.
2. Proposed budget is reflective of the staff outlined in the proposed scope of work.
3. Proposed budget is reasonable and competitive for services solicited.
4. Proposed budget is reflective of the estimated annual amount of $1,417,797 for year one.

6.3 Selection Process:

Selection will be made by totaling the points from the Technical Proposal, the Cost Proposal, and the interview/demo (if applicable). The City reserves the right to negotiate the terms and conditions of any resulting contract. Final contract award, if any, will be made by the Director of Health or Board of Supervisors depending on value. The selected Proposer will be required to comply with all insurance and license requirements of the City.

6.4 Award of Contract:

A. The City shall award one contract to the Proposer that meets the Minimum Qualifications of this Solicitation whose Proposal receives the highest number of points.

B. If the contract amount exceeds $10 million or the term exceeds 10 years, approval by the Board of Supervisors will also be required. The decision of the Board of Supervisors will be final.

SECTION 7 – CITY'S CONTRACT TERMS

The successful Proposer will be required to enter into a contract substantially in the form of Attachment M (City's Contract Terms) presented in this Solicitation. Proposers must review this contract for acceptance during the Solicitation process, and any change requests or questions must be submitted during the question-and-answer period outlined in the Solicitation. The City will not accept any changes to the contract after the question period closes. **Proposals submitted with exceptions to the scope or contract terms will not be advanced in the evaluation process.**

Contract exceptions must be submitted as a separate Word document following the format below. Requests that do not follow these instructions will not be considered.

a. State the original contract term as written.

b. Provide the proposed revised contract term, with:

   i. Added language in **bold and highlighted in yellow**

   ii. Deleted language shown using ~~red strikethrough~~

c. Explain the rationale for each proposed change.

The City will review the proposed exceptions and respond by indicating whether each request is accepted or denied. The City's response to the exception requests will be issued as part of the Question-and-Answer Addendum.

SECTION 8 – RFP ATTACHMENTS

8.1 RFP Attachments:

The Proposer's legal name **must appear exactly the same on all Proposal documents**, in all databases listed in Section 3.3.B (Notice of Intent to Award – Required Documentation), and in the City's Supplier System (if registered). The firm submitting the Proposal must be the same firm that enters into the contract. If the Proposer operates under a "Doing Business As" (DBA) name, it is the Proposer's sole responsibility to ensure that the DBA is properly registered and included as part of their legal name in all systems and documents.

A. ATTACHMENT A (Contact Information Cover Sheet).

*Must be completed and included with Electronic File #2.

B. ATTACHMENT B (Non-Collusion Affidavit Form).

*Must be completed and included with Electronic File #2.

C. ATTACHMENT C (Reference Form).

*Must be completed and included with Electronic File #2.

D. ATTACHMENT D (12L Compliance).

*Must be completed and included with Electronic File #2.

Non-Profit Entities: If a Contractor is a non-profit entity that receives a cumulative total per year of at least $1,000,000 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 Contractor must comply with Chapter 12L and include in its Proposal:

1. A statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Contractor's meetings and records, and
2. A summary and disposition of all complaints concerning the Contractor's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. If no such complaints were filed, the Contractor shall include a statement to that effect.

Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in Contractor's Chapter 12L submissions shall be grounds for rejection of the Proposal and/or termination of any subsequent contract reached on the basis of the Proposal.

E. ATTACHMENT E (CMD LBE Form 2A).

*Must be completed and included with Electronic File #2.

F. ATTACHMENT F (Minimum Compensation Ordinance (MCO) Declaration Form).

*Must be completed and included with Electronic File #2.

G. ATTACHMENT G (Health Care Accountability Ordinance (HCAO) Declaration Form).

*Must be completed and included with Electronic File #2.

H. ATTACHMENT H (First Source Workforce Projection Form and Fact Sheet).

*Must be completed and included with Electronic File #2.

Proposers must complete and submit the required form via the DocuSign link above. Upon successful submission, Proposers will receive a copy of the completed form via email. A copy of this form must be included in the Proposal as Attachment H to verify that the form was submitted correctly and on time.

More information about the City's First Source Hiring Program can be found at the First Source Hiring Program website.

Note: Proposers are not required to register with the WorkforceLinkSF database at the time of Proposal submission.

I. ATTACHMENT I (Cost Proposal Form).

Proposers must follow the instructions in Section 5.2.3 (Electronic File #3 Cost Proposal).

J. Reserved (ATTACHMENT J (Funder Terms, Conditions, and Requirements)).

K. Reserved (ATTACHMENT K (Vendor Attestation of Digital Accessibility Compliance)).

*Must be completed and included with Electronic File #2.

L. Reserved (ATTACHMENT L (Web Content Accessibility Guidelines 2.1 Level AA ("WCAG") Information Factsheet)).

*Must be completed and included with Electronic File #2.

M. ATTACHMENT M (City's Contract Terms).

Proposers must follow the instructions in Section 7 (City's Contract Terms).

Attachment A

Contact Information Cover Sheet

Request for Proposals SFGOV-0000012013

HIV Hospice Care and Mental Health Services

All fields are required. This form must be completed and included with Electronic File #2.

A. Proposer Information

Legal Name of Company (Proposer): Click or tap here to enter text.

Legal name must include any "Doing Business As" (DBA). The name provided here must exactly match the name used in all submitted documents.

Business Address: Click or tap here to enter text.

Federal Employee Identification Number: Click or tap here to enter text.

California Business Entity Number: Click or tap here to enter text.

City Supplier ID (if registered): Click or tap here to enter text.

Telephone: Click or tap here to enter text.

Cell Phone: Click or tap here to enter text.

Contact Person: Click or tap here to enter text.

Email Address: Click or tap here to enter text.

B. Certification of Authority

I hereby certify that I have the authority to submit this Proposal to the City and County of San Francisco for the above listed individual or company. I certify that I have the authority to bind myself/this company in a contract should I be successful in my Proposal.

Printed Name: Click or tap here to enter text.

Title: Click or tap here to enter text.

Signature: Click or tap here to enter text.

Date: Click or tap here to enter text.

C. Business Type

The following information relates to the legal contractor listed above, whether an individual or a company. If successful, the contract language should refer to me/my company as (select one):

☐ An individual

☐ A partnership. Partners' names:Click or tap here to enter text.

☐ A company

☐ A non-profit. Fiscal Sponsor's name (if applicable):Click or tap here to enter text.

☐ A corporation. If a corporation, organized in the state of:Click or tap here to enter text.

D. Representation re Good Standing, Licenses, Etc.

A representation that the Proposer is in good standing in the State of California and has all necessary licenses, permits, approvals and authorizations necessary to perform the work and to operate as a business in the State of California and the City and County of San Francisco. Please check the item below; failure to check the item may result in the Proposal being deemed non-responsive.

☐ I hereby represent and certify that the above statement is true and correct.

E. Representation Regarding City Contracting Requirements

A representation that the Proposer is able and willing to comply with all the contracting requirements described in this RFP. Please check all items below; failure to check all items may result in the Proposal being deemed non-responsive.

☐ I hereby represent and certify that the Proposer will comply with all contracting requirements, including the City's Contract Terms, as described in this RFP. The City reserves the right to terminate negotiations with any candidate that does not execute the City's Contract Terms.

☐ I hereby represent and certify that the Proposer will comply with all requirements of the Business Associate Agreement (BAA) and any attestations and/or attachments as presented in Attachment J (City's Contract Terms) of this RFP. The City reserves the right to terminate negotiations with any candidate that does not execute or agree to the Business Associate Agreement.

☐ I hereby represent and certify that the Proposer will comply with all San Francisco labor laws for City contractors.

1. Minimum Compensation Ordinance (MCO)

☐ MCO Declaration completed

For more information about the MCO, please visit the MCO website. The Declaration is required even if your firm qualifies for an exemption under OLSE's list of approved exemptions. The MCO applies to all subcontractors, and Proposers are responsible for ensuring that their subcontractors comply with all MCO requirements.

2. Health Care Accountability Ordinance (HCAO)

☐ HCAO Declaration completed

For more information about the HCAO, please visit the HCAO website. The Declaration is required even if your firm qualifies for an exemption under OLSE's list of approved exemptions. The HCAO applies to all subcontractors, and Proposers are responsible for ensuring that their subcontractors comply with all HCAO requirements.

3. **Health Care Security Ordinance (HCSO)**

For more information about HCSO, please visit the HCSO website.

4. **First Source Hiring Form (FSH) – select one option**

For more information about FSH, please visit the FSH Program website.

☐ FSH completed (proof included in Proposal)

☐ FSH exception submitted to First Source (proof included in Proposal)

F. Addenda Acknowledgment

Acknowledgment of receipt of any addenda issued by the City for this RFP is required by including the acknowledgment with your Proposal. Failure to acknowledge the addenda issued may result in your Proposal being deemed non-responsive. In the space provided below, please acknowledge receipt of each addendum.

Addendum Number(s) Acknowledged: Click or tap here to enter text.

Attachment B

Non-Collusion Affidavit

Request for Proposals SFGOV-0000012013

HIV Hospice Care and Mental Health Services

All fields are required. This form must be completed and included with Electronic File #2.

A. Non-Collusion Affidavit

The undersigned, deposes and says that they are Click or tap here to enter text. of Click or tap here to enter text., the party making the foregoing Proposal. That the Proposal is not made in the interests of, or on the behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Proposal is genuine and not collusive or sham; that the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham Proposal, or that anyone shall refrain from Proposing; that the Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Proposal price of the Proposer or any other Proposer, or to fix any overhead, profit, or cost element of the Proposal price, or of that of any other Proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the Proposal are true; and, further, that the Proposer has not, directly or indirectly, submitted their Proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereof, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, Proposal depository, or any other member or agent thereof to effectuate a collusive or sham Proposal.

Signature: Click or tap here to enter text.

Title: Click or tap here to enter text.

Attachment C

Reference Form

Request for Proposals SFGOV-0000012013

HIV Hospice Care and Mental Health Services

All fields are required. This form must be completed and included with Electronic File #2.

A. Reference 1

Name of Firm that Provided Products/Services to Reference (Prime or Subcontractor's Name): Click or tap here to enter text.

Organization Name: Click or tap here to enter text.

Contact Name and Title: Click or tap here to enter text.

Email: Click or tap here to enter text.

Phone Number: Click or tap here to enter text.

Effective Date of Contract: Click or tap here to enter text.

End Date of Contract: Click or tap here to enter text.

Value of Contract: Click or tap here to enter text.

Description of Products/Services Provided: Click or tap here to enter text.

B. Reference 2

Name of Firm that Provided Products/Services to Reference (Prime or Subcontractor's Name): Click or tap here to enter text.

Organization Name: Click or tap here to enter text.

Contact Name and Title: Click or tap here to enter text.

Email: Click or tap here to enter text.

Phone Number: Click or tap here to enter text.

Effective Date of Contract: Click or tap here to enter text.

End Date of Contract: Click or tap here to enter text.

Value of Contract: Click or tap here to enter text.

Description of Products/Services Provided: Click or tap here to enter text.

C. Reference 3

Name of Firm that Provided Products/Services to Reference (Prime or Subcontractor's Name): Click or tap here to enter text.

Organization Name: Click or tap here to enter text.

Contact Name and Title: Click or tap here to enter text.

Email: Click or tap here to enter text.

Phone Number: Click or tap here to enter text.

Effective Date of Contract: Click or tap here to enter text.

End Date of Contract: Click or tap here to enter text.

Value of Contract: Click or tap here to enter text.

Description of Products/Services Provided: Click or tap here to enter text.

Attachment D

Administrative Code Chapter 12L Compliance

Request for Proposals SFGOV-0000012013

HIV Hospice Care and Mental Health Services

All fields are required. This form must be completed and included with Electronic File #2.

A. Non-Profit Entities

If a Proposer is a non-profit entity that receives a cumulative total per year of at least $1,000,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the Proposer must describe how Proposer will comply with Chapter 12L.

Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in Proposer's Chapter 12L submissions shall be grounds for rejection of the Proposal and/or termination of any subsequent Agreement reached on the basis of the Proposal.

☐ This form is not applicable to my organization. My organization is a non-profit that does not receive a cumulative total per year of at least $1,000,000 in City funds or City-administered funds.

☐ This form is not applicable to my organization. My organization is not a non-profit.

B. Item #1: Public Access to Meetings and Records

A statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Proposer's meetings and records.

Click or tap here to enter text.

C. Item #2: Complaints and Disposition

A summary and disposition of all complaints concerning the Proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. If no such complaints were filed, the Proposer shall include a statement to that effect.

Click or tap here to enter text.

If you need more space for your explanation, please attach a separate document.

FORM 2A: CMD CONTRACT PARTICIPATION FORM

Section 1: This form must be submitted with the proposal or the proposal may be deemed non-responsive and rejected. Proposer, each Joint Venture partner, Subconsultants, Vendors, and lower sub tiers must be listed on this form. The RFP/RFQ will state which LBE size category (e.g., Micro, Small, and/or SBA-LBE) can be used to meet the LBE sub participation requirement(s). All LBE Proposers/JVs with LBE participation must meet the LBE sub participation requirement(s). Any LBE Proposer/JV with LBE participation may not count its participation towards meeting the LBE sub participation requirement(s). Be sure to check the appropriate box for Rating Bonus under Section 2. If more space is needed for Section 1, attach additional copies of this form.

Contract No.:		
Contract Title:		**LBE SUBPARTICIPATION REQUIREMENT(S)**
Firm:		☐ Micro and Small-LBE Sub Requirement - ___%
Contact Person:		☐ Micro, Small, SBA-LBE Sub Requirement - ___%
Address:		☐ Micro-LBE Sub Requirement - ___%
City/ZIP:		☐ Small-LBE Sub Requirement - ___%
Phone, Email:		☐ SBA-LBE Sub Requirement - ___%

***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	Indicate LBE or Non-LBE. If LBE, Micro, Small, or SBA.	% of LBE Subwork (Carry-Over from % OF Work Column)		
					Micro	Small	SBA
			%		%	%	%
			%		%	%	%
			%		%	%	%
			%		%	%	%
		Total % of Work:	**100%**	**Total LBE Sub Participation:**	%	%	%

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

Owner/Authorized Representative (Signature): _____ Date: _____

Print Name and Title: _____

** See CMD website: http://www.sfgov.org/cmd for each firm's status

Section 2. Rating Bonus

Check applicable boxes.

A. ☐ **NO Rating Bonus Requested 0%**

B. **Contracts with an Estimated Cost in Excess of $400,000 and Less Than or Equal to $10,000,000.** See instructions in Sections 2.01 and 2.02.

☐ **Micro or Small-LBE 10%**

☐ **Joint Venture 7.5%**

☐ **Joint Venture 5%**

☐ **Joint Venture (Micro or Small-LBEs only) 10%**

☐ **SBA-LBE 5%**

C. **Contracts with an Estimated Cost in Excess of the Delegated Purchasing Amount ($20,000 as of July 1, 2024) and Less Than or Equal to $10,000,000.** The below rating bonuses DO NOT apply to Chapter 21 contracts and only apply to Chapter 6 contracts, including Chapter 6.40. See instructions in Section 2.01 for details. This Neighborhood/Zip Code LBE Program shall apply to projects located within the jurisdictional boundary of San Francisco. The program shall not apply to Job Order Contracts (JOC), As-Needed contracts, or other contracts where no specific project location is specified at the time of proposal. The RFP/RFQ will clearly state whether the Pilot Neighborhood/Zip Code LBE Program is applicable to the specific project. A Proposer may receive up to a maximum rating bonus of 13% depending on the particular application.

Prime Neighborhood/Zip Code LBE rating bonus:

☐ **Prime Neighborhood LBE (or a JV where the Neighborhood LBE JV partner(s)' participation is at least 40%) 1%**

OR

☐ **Prime Zip Code LBE (or a JV where the Prime Zip Code LBE JV partner(s)' participation is at least 40%) 1.5%**

Subconsulting Neighborhood/Zip Code LBE rating bonus:

☐ **Sub Neighborhood LBE 0.5%**

OR

☐ **Sub Zip Code LBE 1.5%**

D. **Contracts in Excess of $10,000,000 and Less Than or Equal to $20,000,000. See instructions in Section 2.01.**

☐ **Micro, Small, or SBA-LBE 2%**

E. Mentor-Protégé Program Bid Discount/Rating Bonus. The Mentor Protégé rating bonus is not applicable to professional services contracts. However, for this CMD Attachment 2, the Mentor Protégé rating bonus/bid discount is applicable for Design-Build and/or CM/GC projects only. See instructions in Section 2.01.

☐ **Mentors of the Mentor-Protégé Program 1%**

Section 3. Proposer, Joint Venture Partners, Subconsultant, and Vendor Information

Provide information for 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 on the CMD LBE website at http://www.sfgov.org/cmd. Use additional sheets if necessary.

FIRM NAME:		**VENDOR #:**	
ADDRESS:		**FEDERAL ID #:**	
CITY, ST, ZIP:	**PHONE:**	**EMAIL:**	
SERVICE:			

FIRM NAME:		**VENDOR #:**	
ADDRESS:		**FEDERAL ID #:**	
CITY, ST, ZIP:	**PHONE:**	**EMAIL:**	
SERVICE:			

FIRM NAME:		**VENDOR #:**	
ADDRESS:		**FEDERAL ID #:**	
CITY, ST, ZIP:	**PHONE:**	**EMAIL:**	
SERVICE:			

FIRM NAME:		**VENDOR #:**	
ADDRESS:		**FEDERAL ID #:**	
CITY, ST, ZIP:	**PHONE:**	**EMAIL:**	
SERVICE:			

FIRM NAME:		**VENDOR #:**	
ADDRESS:		**FEDERAL ID #:**	
CITY, ST, ZIP:	**PHONE:**	**EMAIL:**	
SERVICE:			

FIRM NAME:		**VENDOR #:**	
ADDRESS:		**FEDERAL ID #:**	
CITY, ST, ZIP:	**PHONE:**	**EMAIL:**	
SERVICE:			

CITY AND COUNTY OF SAN FRANCISCO

GENERAL SERVICES AGENCY
OFFICE OF LABOR STANDARDS ENFORCEMENT
PATRICK MULLIGAN, DIRECTOR

ATTACHMENT F

Minimum Compensation Ordinance (MCO) Declaration

What the Ordinance does. The Minimum Compensation Ordinance (MCO) became effective October 8, 2000, and was later amended by the Board of Supervisors, with an effective date for the amendments of October 14, 2007. The MCO requires City contractors and subcontractors to pay Covered Employees a minimum hourly wage and to provide 12 compensated and 10 uncompensated days off per year. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements.

The MCO applies only if you have at least $25,000 in cumulative annual business with a City department or departments and have more than 5 employees, including employees of any parent, subsidiaries and subcontractors.

The City may require contractors to submit reports on the number of employees affected by the MCO.

Effect on City contracting. For contracts and amendments signed on or after October 8, 2000 the MCO will have the following effect:

- In each contract, the contractor will agree to abide by the MCO and to provide its employees the minimum benefits the MCO requires, and to require its subcontractors subject to MCO to do the same.

- If a contractor does not agree to provide the MCO's minimum benefits, the City will award a contract to that contractor **only if** the contractor has received an approved exemption or waiver under MCO from the Office of Labor Standards Enforcement (OLSE) through the contracting Department. The contract will not contain the agreement to abide by the MCO if there is an exemption or waiver on file.

What this form does. If you can assure the City now that, beginning with the first City contract or amendment you receive after October 8, 2000 and until further notice, you will provide the minimum benefit levels specified in the MCO to your covered employees, and will ensure that your subcontractors also subject to the MCO do the same, this will help the City's contracting process.

If you cannot make this assurance now, please do not return this form.

For more information, (1) see our Website, including the complete text of the ordinance: www.sfgov.org/olse, (2) e-mail us at: MCO@sfgov.org, (3) Phone us at (415) 554-7903.

Where to Send this Form. Submit this form via San Francisco's centralized vendor portal sfcitypartnersupport@sfgov.org or call the Supplier Support Desk at 415-944-2442, Ext 1

Declaration

In order to be a certified vendor with the City and County of San Francisco, this company will provide, if applicable, the minimum benefit levels specified in the MCO to our Covered Employees, and will ensure that our subcontractors also subject to the MCO do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature	Date
Print Name	Bidder/Supplier # - if known
Company Name	( ) Phone
	Federal Employer ID #

CITY AND COUNTY OF SAN FRANCISCO

GENERAL SERVICES AGENCY
OFFICE OF LABOR STANDARDS ENFORCEMENT
PATRICK MULLIGAN, DIRECTOR

ATTACHMENT G

Health Care Accountability Ordinance (HCAO) Declaration

What the Ordinance Requires. The Health Care Accountability Ordinance (HCAO), which became effective July 1, 2001, requires Contractors that provide services to the City or enter into certain leases with the City, and certain Subcontractors, Subtenants and parties providing services to Tenants and Subtenants on City property, to provide health plan benefits to Covered Employees, or make payments to the City for use by the Department of Public Health (DPH), or, under limited circumstances, make payments directly to Employees.

The HCAO applies only to Contractors with at least $25,000 ($50,000 for non-profit organizations) in cumulative annual business with a City department(s) and have more than 20 Employees (50 Employees for non-profit organizations) including Employees of any parent or subsidiaries.

The City may require Contractors to submit reports on the number of Employees affected by the HCAO.

Effect on City Contracting. For contracts and amendments signed on or after July 1, 2001, the HCAO requires the following:

- Each contract must include terms ensuring that the Contractor will agree to abide by the HCAO and either to provide its employees with health plan benefits meeting the Minimum Standards set forth by the Director of Health or to make the payments required by the HCAO;

- All City Contractors must agree to comply with the requirements of the HCAO unless the Contracting Department has obtained an approved exemption or waiver under the HCAO from the Office of Labor Standards (OLSE).

- Contractors must require any Subcontractors subject to the HCAO to comply with the HCAO:

The Purpose of This Declaration. By submitting this declaration, you are providing assurances to the City that, beginning with the first City contract or amendment you receive after July 1, 2001 and until further notice, you will either provide the health plan benefits meeting the Minimum Standards to your covered employees or make the payments required by the HCAO, and will ensure that your Subcontractors also abide by these requirements. **If you cannot provide this assurance, do *not* return this form.**

To obtain more information regarding the HCAO, Visit our website, which includes links to the complete text of the HCAO, at www.sfgov.org/olse/hcao; send an e-mail to HCAO@sfgov.org; or call (415) 554-7903.

Where to Send this Form. Submit this form via San Francisco's centralized vendor portal sfcitypartnersupport@sfgov.org or call the Supplier Support Desk at 415-944-2442, Ext 1

Declaration

In order to be a certified vendor with the City and County of San Francisco, the company named below will either provide, if applicable, health benefits specified in the HCAO to our covered employees or make the payments required by the HCAO, and will ensure that our subcontractors that are subject to the HCAO also comply with these requirements, until further notice. The company named below will provide such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature	Date
Print Name	Bidder/Supplier # - if known
Company Name	(____) Phone / Federal Employer ID #

Attachment H

First Source Workforce Projection Form and Fact Sheet

Request for Proposals SFGOV-0000012013

HIV Hospice Care and Mental Health Services

A. Submission Instructions

1. Proposers must complete and submit the required First Source Workforce Projection Form and Fact Sheet.
2. Upon successful submission, Proposers will receive a copy of the completed form via email.
3. A copy of this form must be included in the Proposal as Attachment H to verify that the form was submitted correctly and on time.

Registration with the San Francisco Office of Economic and Workforce Development's data system is not necessary to submit the form and should not be completed during the solicitation process.

For more information, please visit the First Source Hiring Program website.

ATTACHMENT "M"

CITY'S CONTRACT TERMS

City and County of San Francisco

Office of Contract Administration

Purchasing Division

City Hall, Room 430

1 Dr. Carlton B. Goodlett Place

San Francisco, California 94102-4685

Agreement between the City and County of San Francisco and

[Insert name of contractor]

[Insert agreement number (if applicable)]

[Insert agreement title or brief description]

Table of Contents

Article 1 Definitions 2
Article 2 Term of the Agreement 4
Article 3 Financial Matters 4
Article 4 Services and Resources 10
Article 5 Insurance and Indemnity 12
Article 6 Liability of the Parties 15
Article 7 Payment of Taxes 16
Article 8 Termination and Default 16
Article 9 Rights in Deliverables 20
Article 10 Additional Requirements Incorporated by Reference 21
Article 11 General Provisions 25
Article 12 Department Specific Terms 28
Article 13 Data and Security 30
Article 14 Appendices 34
Article 15 MacBride And Signature 34

This Agreement is made this [insert day] day of [insert month], [insert year], in the City and County of San Francisco, State of California, by and between [name of Contractor] ("Contractor") and the City and County of San Francisco ("City"), acting by and through its Department of Public Health.

Recitals

WHEREAS, the Department of Public Health ("Department") wishes to procure [insert short description of the services City intends to buy] from Contractor; and

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

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

[RFQ] WHEREAS, Contractor was competitively selected pursuant to a Request for Qualifications ("RFQ") entitled [enter RFQ name] issued through Sourcing Event ID [Enter Number] which resulted in a prequalified pool of suppliers from which Contractor was selected; and

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

[LBE requirements waived] WHEREAS, this is an agreement for Services and the Local Business Enterprise ("LBE") subcontracting participation requirement for the Services has been waived pursuant to waiver CMD14BXXXXXXX; and

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

[Exempt from 14B] WHEREAS, this Agreement is deemed exempt from Chapter 14B of the San Francisco Administrative Code because [enter reason but note that local preferences are not permitted by the grant funding sources, enter appropriate reason if this is not why] and, as such, there is no Local Business Enterprise ("LBE") subcontracting participation requirement for this Agreement; and

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

[Multiple Contracts] WHEREAS, approval for the Agreement was obtained on [insert date of Civil Service Commission action or DHR approval date if under $200K] from the **[**Civil Service Commission or Department of Human Resources on behalf of the Civil Service Commission]

under PSC number [insert PSC number] which authorizes the award of multiple agreements, the total value of which cannot exceed [insert dollar amount] and the individual duration of which cannot exceed [insert number of years]; and

[Exempt from PSC] WHEREAS, this Agreement is for _____ (as defined by the 2023 PSC Policy of the Civil Service Commission) and, as such, is exempt from Civil Service Commission review; and

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

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

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

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

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

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

1.2 **"Appendices" means the appendices listed in Article 14 ("Appendices") herein.**

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

1.4 **"Artificial Intelligence System"** means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it

receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

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

1.6 **"City" means the City and County of San Francisco, a municipal corporation, acting by and** through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and the Department of Public Health.

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

1.8 **"CMD"** means the Contract Monitoring Division of the City.

1.9 **"Confidential Information" means confidential City information including, but not limited to,** personal identifiable information ("PII"), protected health information ("PHI"), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information. Confidential Information includes, without limitation, City Data.

1.10 **"Contractor"** means [insert name and address of contractor].

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

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

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

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

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

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

1.17 **"Party" and "Parties"** means City and Contractor either individually or collectively.

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

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

Article 2 Term of the Agreement

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

2.2 **Options to Extend.** City has the option to renew the Agreement for a period of [enter number of years]. City may exercise this option at City's sole and absolute discretion by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement." Extensions may be for the whole or partial period provided for above.

Option 1: MMDDYY-MMDDYY

Option 2: MMDDYY-MMDDYY

Article 3 Financial Matters

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

3.1.1 **Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of Section 3.105 of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without

penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

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

3.3 **Compensation.**

3.3.1 **Calculation of Charges and Contract Not to Exceed Amount.** The amount of this Agreement shall not exceed [insert whole dollar amount in numbers and words], the breakdown of which appears in Appendix B, "Calculation of Charges." City shall not be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement.

3.3.2 **Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments until City approves the Services delivered. Payments to Contractor by City shall not excuse Contractor from its obligation to replace the unsatisfactory Services even if the unsatisfactory character was apparent or could have been detected at the time such payment was made. Non-conforming Services may be rejected by City and in such case must be replaced by Contractor without delay at no cost to City.

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

3.3.4 **Invoicing.** Contractor shall invoice the City for the [Commodities/Services] provided under this Agreement on a timely basis, and in no event later than [30] days after delivery of the [Commodities/Services] or as specified in Appendix B, Calculation of Charges, except for the last invoice of the fiscal year which must be submitted within [15] days before the end of July. Invoices submitted by Contractor must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.7, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

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

3.3.6 **Grant Funded Contracts.**

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

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

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

3.3.7 **Payment Terms.**

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

(b) **Payment Discount Terms.** The Payment Discount Terms for this Agreement are as follows: [___] %/[___]Days, Net [___]. The Payment Discount period begins upon date of completion of delivery of the Services on a purchase order for which payment is sought, or upon date of receipt of properly prepared invoices covering such items, whichever is later. Payment is deemed to be made, for the purpose of earning the discount, on the date City issued a check to Contractor or, if Contractor has agreed to electronic payment, the date City posted electronic payment to Contractor.

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

3.4.1 Contractor shall annually have its books of accounts audited by a Certified Public Accountant and a copy of said audit report and the associated management letter(s) shall be transmitted to the Director of Public Health or his /her designee within one hundred eighty (180) calendar days following Contractor's fiscal year end date. If Contractor expends $1,000,000 or more in Federal funding per year, from any and all Federal awards, said audit shall be conducted in accordance with 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Said requirements can be found at the following website address: https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl.

3.4.2 If Contractor expends less than $1,000,000 a year in Federal awards, Contractor is exempt from the single audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal Agency, pass-through entity and General Accounting Office. Contractor agrees to reimburse the City any cost adjustments necessitated by this audit report. Any audit report which addresses all or part of the period covered by this Agreement shall treat the service components identified in the detailed descriptions attached to Appendix A and referred to in the Program Budgets of Appendix B as discrete program entities of the Contractor.

3.4.3 The Director of Public Health or his / her designee may approve a waiver of the audit requirement in Section 3.4.2 above, if the contractual Services are of a consulting or personal services nature, these Services are paid for through fee for service terms which limit the City's risk with such contracts, and it is determined that the work associated with the audit would produce undue burdens or costs and would provide minimal benefits. A written request for a waiver must be submitted to the DIRECTOR ninety (90) calendar days before the end of the Agreement term or Contractor's fiscal year, whichever comes first.

3.4.4 Any financial adjustments necessitated by this audit report shall be made by Contractor to the City. If Contractor is under contract to the City, the adjustment may be made in the next subsequent billing by Contractor to the City, or may be made by another written schedule determined solely by the City. In the event Contractor is not under contract to the City, written arrangements shall be made for audit adjustments.

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section.

3.6 **Payment of Prevailing Wages**.

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

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

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

3.6.4 **Job Site Notices and Records.** Contractor shall prominently post at each job site a sign informing employees that the work is subject to the City's Prevailing Wage

requirements and that these requirements are enforced by OLSE. Contractor shall also maintain a sign-in and sign-out sheet in a format prescribed by OLSE showing which employees are present on the job site.

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

3.6.6 **Certified Payrolls.** Contractor shall prepare certified payrolls for the period involved for all employees, including those of subcontractors, who performed Covered Services. Contractor and each subcontractor performing Covered Services shall electronically submit certified payrolls to City using OLSE's certified payroll reporting system. Contractor and all subcontractors that will perform Covered Services shall attend a training session on the preparation and electronic submission of certified payroll records provided by City. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to City.

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

3.6.8 **Remedies.** Should Contractor, or any subcontractor performing Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Agreement or subcontract for the Covered Services, the general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or

neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in the San Francisco Labor and Employment Code and/or California Labor Code Section 1775. City, when certifying any payment which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

Article 4 Services and Resources

4.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in **Appendix A, "Scope of Services."** Officers and employees of City are not authorized to request and City is not required to compensate for Services beyond those stated.

4.2 **Qualified Personnel.** Contractor represents and warrants that it is qualified to perform the Services for which it is contracted to provide through this Agreement, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit sufficient resources for timely completion within the project schedule.

4.3 **Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. City's execution of this Agreement constitutes its approval of the subcontractors listed below and/or in appendices.

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

4.4.1 **Independent Contractor.** For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required under this Agreement. Contractor, including its agents and employees will not represent or hold itself/themselves out to be employees of City at any time. Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor is liable for its acts and omissions. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing Services and work, or any agent or employee of Contractor

providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor, or any of its agents or employees. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with Section 4.4. Should City determine that Contractor is not performing in accordance with the requirements of Section 4.4, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

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

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

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

4.7 **Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the Services are delayed beyond the scheduled milestones and timelines as provided in Appendix A, "Scope of Services," City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the sum of **[insert whole dollar amount in words and numbers -- no pennies and no ".00"]** per calendar day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this Agreement was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor under this Agreement or any other contract between City and Contractor. Such deductions shall not be considered a penalty but rather agreed upon monetary damages sustained by City because of Contractor's failure to furnish deliverables to City within the time fixed or such extensions of time permitted in writing by City.

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

4.9 **Fidelity Bond or Crime Insurance.** Contractor shall maintain throughout the term of this Agreement, at no expense to City, a fidelity bond or a crime policy (Employee Dishonesty Coverage) covering all officers and employees in an amount of not less than **[insert bond or insurance level]** and including City as obligee or loss payee as its interest may appear. If insurance coverage is written on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the Agreement. The coverage shall be continuous for the duration of the Agreement and for not less than 24 months following the end of the Agreement.

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

Article 5 Insurance and Indemnity

5.1 **Insurance.**

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

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

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

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

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

(e) Reserved (Technology Errors and Omissions Liability Insurance).

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

(g) Reserved (Pollution Liability Insurance).

5.1.2 **Additional Insured.**

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

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

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

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

5.1.4 **Primary Insurance.**

(a) The Commercial General Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Reserved (Pollution Liability Primary Insurance Endorsement).

5.1.5 **Other Insurance Requirements.**

(a) Thirty (30) days' advance written notice shall be provided to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the City email address: **insurance-contractsrm410@sfdph.org** .

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, be maintained for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

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

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

(f) If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to

name the City and County of San Francisco and its officers, agents, and employees, and the Contractor as additional insureds and waive subrogation in favor of City, where required.

5.2 **Indemnification.**

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personal identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Contractor, its subcontractors, or either's agent or employee. Contractor shall also indemnify, defend and hold City harmless from all suits or claims or administrative proceedings for breaches of federal and/or state law regarding the privacy of health information, electronic records or related topics, arising directly or indirectly from Contractor's performance of this Agreement. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants, experts, and related costs, and City's costs of investigating any claims against City.

5.2.2 In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

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

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

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY'S TOTAL LIABILITY UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ITS PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1,

"CALCULATION OF CHARGES AND CONTRACT NOT TO EXCEED AMOUNT", OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

6.3 **Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

Article 7 Payment of Taxes

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

7.2 **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to timely report on behalf of City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by City to enable City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

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

Article 8 Termination and Default

8.1 **Termination for Convenience**

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

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

(a) Completing performance of any Services that City requires Contractor to complete prior to the Termination Date.

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

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

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

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

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

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

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

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all

Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling and returning material or equipment delivered to City or otherwise disposed of as directed by City.

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

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the Termination Date, except for those costs specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

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

8.1.6 **Payment Obligation.** City's payment obligation under Section 8.1, "Termination for Convenience" shall survive termination of this Agreement.

8.2 **Termination for Default; Remedies.**

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

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

3.5	Submitting False Claims.	10.3.6	Alcohol and Drug-Free Workplace
4.5	Assignment	11.10	Compliance with Laws
Article 5	Insurance and Indemnity	Article 13	Data and Security
Article 7	Payment of Taxes	Appendix E	Business Associate Agreement
10.3.5	Working with Minors		

(b) Contractor fails or refuses to perform the Services or to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten (10) days after written notice thereof from City to Contractor or from when Contractor otherwise becomes aware of the Event of Default. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, in addition to all other remedies available to City, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

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

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

8.2.2 **Default Remedies.** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default. Contractor shall pay to City on demand all costs and expenses incurred by City arising from the Event of Default and/or in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall also have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with City.

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

deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent in accordance with Article 11.

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

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

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

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

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Promptly upon expiration of this Agreement, or promptly upon receipt by Contractor of notice of termination of this Agreement. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any Deliverables, work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights in Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors in the Deliverables, any partially-completed Deliverables, and related materials, shall become the property of and will be transmitted to City. Unless expressly authorized in writing by City, Contractor may not retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** All copyrights in Deliverables that are considered works for hire under Title 17 of the United States Code, shall be the property of City. If any such Deliverables are ever determined not to be works for hire under federal law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon its subcontractors. With City's prior written approval, Contractor and its subcontractors may retain and use copies of such works for reference and as documentation of their respective experience and capabilities provided that any such use is in conformance with the confidentiality provisions of this Agreement.

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference**. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/%20.

10.2 **Governmental Conduct Related Contractual Obligations.**

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

10.2.2 **Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.2.3 **Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a

City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves; (ii) a candidate for that City elective office; or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.3 **Employment Related Contractual Obligations.**

10.3.1 **Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of San Francisco Administrative Code Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least **[enter percentage]** of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

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

10.3.3 **Health Care Accountability Ordinance.** San Francisco Labor and Employment Code Article 121 applies to this Agreement. Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 121.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Article 121, as well as the Health Commission's minimum standards, is available on the web at http://sfgov.org/olse/hcao. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any Subcontractor with

20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

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

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

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

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

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

10.3.9 **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in Article 131.2.

10.4 **Environmental Related Contractual Obligations.**

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

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

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

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

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

10.5 **Nonprofit Contractor Obligations.**

10.5.1 **Good Standing.** If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General's Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City's request, Contractor shall provide documentation

demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General's Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

10.5.2 **Public Access to Nonprofit Records and Meetings.** If Contractor is a nonprofit organization, provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries), and receives a cumulative total per year of at least $1,000,000 in City or City-administered funds, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

Article 11 General Provisions

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

To CITY:	Office of Contract Management and Compliance Department of Public Health 101 Grove Street, Room **410** San Francisco, California 94102	e-mail:	<CA e-mail>
And:	Program Person Section Address San Francisco, Ca, Zip	e-mail:	<PM e-mail>
To CONTRACTOR:	Contractor Address City, State Zip	e-mail:	<V e-mail>

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by e-mail, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least ten (10) days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

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

11.2.1 Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to people with disabilities. Contractor shall provide the services specified in this Agreement in a manner that complies

with the ADA and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

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

11.2.3 Contractor shall adhere to the requirements of (i) the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sec. 1201 et seq.), (ii) Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), (iii) Section 255 of the Communications Act Guidelines, (iv) the applicable Revised Section 508 Standards published by the U.S. Access Board (https://www.access-board.gov/ict/), and (v) the Web Content Accessibility Guidelines (WCAG) 2.1, Level AA, as amended from time to time. Contractor shall ensure that all information content and technology provided under this Agreement fully conforms to the applicable Revised 508 Standard, as amended from time to time, prior to delivery and before the City's final acceptance of the Services and/or Deliverables.

11.2.4 **Web and Mobile Content Accessibility** Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sec. 1201 et seq.), including the Web Content Accessibility Guidelines (WCAG) 2.1, Level AA, as specified in the Department of Justice's Title II Rule on the accessibility of web content and mobile applications Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and the applicable Revised Section 508 Standards published by the U.S. Access Board (https://www.access-board.gov/ict/), as amended from time to time]. Contractor shall ensure that all ICT provided under this Agreement fully conforms to the Department of Justice's Title II rules and the applicable Revised 508 Standard, prior to delivery and before the City's final acceptance of the Services and/or Deliverables.

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

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all City records related to its formation, Contractor's performance of Services, and City's payment may be subject to the California Public Records Act, (California Government Code § 7920 et seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and

approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than twenty percent (20%).

11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. City may elect, in its sole discretion, to participate in informal dispute resolution proceedings. Disputes will not be subject to binding arbitration. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of City. Neither Party will be entitled to legal fees or costs for matters resolved under Section 11.6.

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

11.6.3 **Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California without regard to conflict of law provisions. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

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

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

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

11.10 **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible

so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

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

11.12 **Order of Precedence.** If the Appendices to this Agreement include any Contractor terms, Contractor agrees that in the event of any discrepancy, inconsistency, gap, ambiguity, or conflict in language between City's terms and Contractor's terms, City's terms shall take precedence. Any hyperlinked terms included in Contractor's terms shall have no legal effect.

11.13 **Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to any City Data under this Agreement, and in no event later than twenty-four (24) hours after Contractor receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by City to Contractor, independent of where City Data is stored.

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

Article 12 Department Specific Terms

12.1 **Exclusion Lists and Employee Verification.** Upon hire and monthly thereafter, Contractor will check the exclusion lists published by the Office of the Inspector General (OIG), General Services Administration (GSA), and the California Department of Health Care Services (DHCS) to ensure that any employee, temporary employee, volunteer, consultant, or governing body member responsible for oversight, administering or delivering state or federally-funded services who is on any of these lists is excluded from (may not work in) your program or agency. Proof of checking these lists must be retained for seven years.

Prevention of Fraud, Waste and Abuse. Contractor shall comply with all laws designed to prevent fraud, waste, and abuse, including, but not limited to, provisions of state and Federal law applicable to healthcare providers and transactions, such as the False Claims Act (31 U.S.C. § 3729 et seq.), the Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Physician Self-Referral Law (Stark Law, 42 U.S.C. § 1395nn), and California Business & Professions Code § 650.

Contractor shall immediately notify City of any suspected fraud, waste, and abuse under state or federal law.

12.2 **Certification Regarding Lobbying.**

12.2.1 Contractor certifies to the best of its knowledge and belief that: No federally appropriated funds have been paid or will be paid, by or on behalf of Contractor to any persons for influencing or attempting to influence an officer or an employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the entering into of any federal cooperative agreement, or the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan or cooperative agreement.

12.2.2 If any funds other than federally appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, Contractor shall complete and submit Standard Form -111, "Disclosure Form to Report Lobbying," in accordance with the form's instructions.

12.2.3 Contractor shall require the language of this certification be included in the award documents for all subawards at all tiers, (including subcontracts, subgrants, and contracts under grants, loans and cooperation agreements) and that all subrecipients shall certify and disclose accordingly.

12.2.4 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

12.3 **Materials Review.** Contractor agrees that all materials, including without limitation print, audio, video, and electronic materials, developed, produced, or distributed by personnel or with funding under this Agreement shall be subject to review and approval by the Contract Administrator prior to such production, development or distribution. Contractor agrees to provide such materials sufficiently in advance of any deadlines to allow for adequate review. City agrees to conduct the review in a manner which does not impose unreasonable delays on Contractor's work, which may include review by members of target communities.

12.4 **Emergency Response**. Contractor will develop and maintain an Agency Disaster and Emergency Response Plan containing Site Specific Emergency Response Plan(s) for each of its service sites. The Plan should include site specific plans to respond at the time of an emergency (emergency response plans) and plans to continue essential services after a disaster (continuity of operations plans). The agency-wide plan should address disaster coordination between and among service sites. Contractor will update the Agency/site(s) plan

as needed and Contractor will train all employees regarding the provisions of the plan for their Agency/site(s). Contractor will attest on its annual Community Programs' Contractor Declaration of Compliance whether it has developed and maintained an Agency Disaster and Emergency Response Plan, including a site specific emergency response plan and a continuity of operations plan for each of its service sites. Contractor is advised that Community Programs Contract Compliance Section staff will review these plans during a compliance site review. Information should be kept in an Agency/Program Administrative Binder, along with other contractual documentation requirements for easy accessibility and inspection.

In a declared emergency, Contractor's employees shall become emergency workers and participate in the emergency response of Community Programs, Department of Public Health. Contractors are required to identify and keep Community Programs staff informed as to which two staff members will serve as Contractor's prime contacts with Community Programs in the event of a declared emergency.

12.5 **Health and Human Service Contract Dispute Resolution Procedure.** The Parties shall resolve disputes that have not been resolved administratively by other departmental remedies in accordance with the Dispute Resolution Procedure set forth in Appendix [G] incorporated herein by this reference.

12.6 **Contract Amendments; Budgeting Revisions**.

12.6.1 **Formal Contract Amendment:** Contractor shall not be entitled to an increase in the Compensation or an extension of the Term unless the Parties agree to a Formal Amendment in accordance with the San Francisco Administrative Code and Section 11.5 (Modifications of this Agreement).

12.6.2 **City Revisions to Program Budgets:** The City shall have authority, without the execution of a Formal Amendment, to (1) purchase additional Services within the Statement of Work or (2) reallocate funding among the Services within the Statement of Work. Any change made under this Subsection 12.7.2 must not involve an increase in the Maximum Cost or Amount Not to Exceed or a change to the Term of this Agreement, and must be approved in writing by both Parties, by a person with legal authority to bind their respective Party to its terms. Contractor shall not proceed with any work contemplated in any revision to program budget until Contractor receives written notification from City to commence such work. All revisions to program budget will become part of this Agreement, after written execution by the Parties, which will then form the new baseline upon which future changes will be measured.

Article 13 Data and Security

13.1 **Nondisclosure of Private, Proprietary or Confidential Information**.

13.1.1 **Protection of Private Information.** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information

only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 **City Data; Confidential Information.** In the performance of Services, Contractor may have access to, or collect on City's behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City's behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

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

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

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

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

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

For purposes of this Agreement, Parties agree that if Contractor is performing a service or function for or on behalf of a City department that is a Health Care Component, where such service or function makes Contractor a Business Associate of City, Contractor must comply

with the obligations and conditions contained in the Business Associate Agreement ("BAA") that shall be attached to this Agreement as Appendix E, and incorporated as though fully set forth herein. Parties agree that if Contractor is not performing a service or function that makes Contractor a Business Associate of City, a BAA is not required and will not be attached to this Agreement. Contractor, however, must still comply with any data privacy and security laws that apply to Contractor, including, but not limited to, HIPAA, CMIA (Cal. Civ. Code Sec. 56 et.seq.), Cal. Welf. & Inst. Code Sec. 5328, and 42 CFR Part 2

13.4 **Management of City Data.**

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

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

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

City, Contractor shall, within ten (10) business days, securely dispose, clear, purge, and/or physically destroy, all copies of all City Data from its servers, files, hosted environments used in performance of this Agreement (including subcontractors' environments), work stations used to process or produce the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such secure disposal occurred within five (5) business days of the disposal. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

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

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

13.7 **Protected Health Information**. Contractor, all subcontractors, all agents and employees of Contractor and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health information disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Contract. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of protected health information given to Contractor or its subcontractors or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract.

13.8 **Cybersecurity Risk Assessment**. If a Cybersecurity Risk Assessment ("CRA") was required before entering the Agreement, Contractor must complete an annual CRA to demonstrate that it has maintained the data privacy and information security program required for City contractors. If Contractor does not satisfactorily complete an annual CRA,

the City shall have the right, without further obligation or liability to Contractor, to terminate this Agreement or exercise any of its other remedies hereunder. Any failure by Contractor to comply with this Section shall be a material breach of this Agreement.

Article 14 Appendices

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

A: Scope of Services

B: Calculation of Charges

C: [insert title]

Article 15 MacBride And Signature

15.1 **MacBride Principles – Northern Ireland.** The provisions of San Francisco Administrative Code Chapter12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

CITY

Recommended by:

_____

San Francisco Department of Public Health

Approved as to Form:

David Chiu
City Attorney

By: _____
Deputy City Attorney

Approved:

_____
Office of Contract Administration

CONTRACTOR

[company name]

_____

Supplier Number: **[Supplier Number]**

Appendices
Appendix A Scope of Services
Appendix B Calculation of Charges
Appendix C [insert title]

Appendix A
Scope of Services

1. **Background**

   [insert text]

2. **Scope.** Contractor agrees to perform the following Services:

   A. ….

      1. …

      2. …

         i. …

         ii. …

   B. ….

3. **Contract Administrator.[Program Person]**, is the City's Contract Administrator for this contract and the primary contact for the Contractor during the term of this Agreement.

4. **Schedule.** The Contractor shall complete all work by…

5. **Compensation.**

   A. The Contractor shall be compensated based on Appendix B, Calculation of Charges.

   B. Compliance with Grant Award Notices:

      1. The Contractor recognizes that funding for this contract is provided to the City through federal, state or private foundation awards. The Contractor agrees to comply with the provisions of the City's agreements with said funding sources, which agreements are incorporated by reference as though fully set forth.

      2. The Contractor agrees that funds received by the Contractor from a source other than the City to defray any portion of the reimbursable costs allowable under this Agreement shall be reported to the City and deducted by Contractor from its billings to the City to ensure that no portion of the City's reimbursement to Contractor is duplicated.

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

If the Agreement was authorized under a Group Purchasing Organization (GPO) the Contractor shall report all applicable sales under this agreement to the respective GPO.

7. **Evaluation.**

   A. The Contractor shall participate as requested with the City, State and/or Federal government in evaluative studies designed to show the effectiveness of Contractor's Services. The Contractor agrees to meet the requirements of and participate in the evaluation program and management information systems of the City.

   B. Agreements for the provision of services at San Francisco General or Laguna Honda Hospital and Rehabilitation Center, the evaluation program shall include agreed upon performance measures as specified in the Performance Improvement Plan and Performance Measure Grid which is presented in Attachment 1 to Appendix A. Performance measures are reported annually to the Zuckerberg San Francisco General performance improvement committees (PIPS and Quality Council) or the to the Administration Office of Laguna Honda Hospital and Rehabilitation Center.

   C. The City agrees that any final written reports generated through the evaluation program shall be made available to Contractor within 30 working days. The Contractor may submit a written response within thirty working days of receipt of any evaluation report and such response will become part of the official report.

8. **Possession of Licenses/Permits.** Contractor warrants the possession of all licenses and/or permits required by the laws and regulations of the United States, the State of California, and the City to provide the Services. Failure to maintain these licenses and permits shall constitute a material breach of this Agreement.

9. **Adequate Resources.** Contractor agrees that it has secured or shall secure at its own expense all persons, employees and equipment required to perform the Services required under this Agreement, and that all such Services shall be performed by Contractor, or under Contractor's supervision, by persons authorized by law to perform such Services.

10. **Acknowledgement of Funding.** Contractor agrees to acknowledge the San Francisco Department of Public Health in any printed material or public announcement describing the San Francisco Department of Public Health-funded Services. Such documents or announcements shall contain a credit substantially as follows: "This program/service/activity/research project was funded through the Department of Public Health, City and County of San Francisco."

11. **Client Fees and Third Party Revenue.**

A. Fees required by federal, state or City laws or regulations to be billed to the client, client's family, or insurance company, shall be determined in accordance with the client's ability to pay and in conformance with all applicable laws. Such fees shall approximate actual cost. No additional fees may be charged to the client or the client's family for the Services. Inability to pay shall not be the basis for denial of any Services provided under this Contract.

B. Contractor agrees that revenues or fees received by Contractor related to Services performed and materials developed or distributed with funding under this Agreement shall be used to increase the gross program funding such that a greater number of persons may receive Services. Accordingly, these revenues and fees shall not be deducted by Contractor from its billing to the City.

12. Hospital Agreement Requirements:

A. Admission Policy. Admission policies for the Services shall be in writing and available to the public. Except to the extent that the Services are to be rendered to a specific population as described in the programs, such policies must include a provision that clients are accepted for care without discrimination on the basis of race, color, creed, religion, sex, age, national origin, ancestry, sexual orientation, gender identification, disability, or AIDS/HIV status.

B. San Francisco Residents Only. Only San Francisco residents shall be treated under the terms of this Agreement. Exceptions must have the written approval of the Contract Administrator.

C. Grievance Procedure. The Contractor agrees to establish and maintain a written Client Grievance Procedure which shall include the following elements as well as others that may be appropriate to the Services: (1) the name or title of the person or persons authorized to make a determination regarding the grievance; (2) the opportunity for the aggrieved party to discuss the grievance with those who will be making the determination; and (3) the right of a client dissatisfied with the decision to ask for a review and recommendation from the community advisory board or planning council that has purview over the aggrieved service. Contractor shall provide a copy of this procedure, and any amendments thereto, to each client and to the Director of Public Health or designated agent (hereinafter referred to as "DIRECTOR"). Those clients who do not receive direct Services will be provided a copy of this procedure upon request.

D. Infection Control, Health and Safety:

1. The Contractor must have a Bloodborne Pathogen (BBP) Exposure Control plan for its employees, agents and subcontractors as defined in the California Code of Regulations, Title 8, Section 5193, Bloodborne Pathogens (http://www.dir.ca.gov/title8/5193.html), and demonstrate compliance with all requirements including, but not limited to, exposure determination, training,

immunization, use of personal protective equipment and safe needle devices, maintenance of a sharps injury log, post-exposure medical evaluations, and recordkeeping.

2. The Contractor must demonstrate personnel policies/procedures for protection of its employees, agents, subcontractors and clients from other communicable diseases prevalent in the population served. Such policies and procedures shall include, but not be limited to, work practices, personal protective equipment, staff/client Tuberculosis (TB) surveillance, training, etc.
3. The Contractor must demonstrate personnel policies/procedures for Tuberculosis (TB) exposure control consistent with the Centers for Disease Control and Prevention (CDC) recommendations for health care facilities and based on the Francis J. Curry National Tuberculosis Center: Template for Clinic Settings, as appropriate.
4. The Contractor is responsible for site conditions, equipment, health and safety of their employees, and all other persons who work or visit the job site.
5. The Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as BBP and TB and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.
6. The Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.
7. The Contractor assumes responsibility for procuring all medical equipment and supplies for use by its employees, agents and subcontractors, including safe needle devices, and provides and documents all appropriate training.
8. The Contractor shall demonstrate compliance with all state and local regulations with regard to handling and disposing of medical waste.

E. Aerosol Transmissible Disease Program, Health and Safety:

1. The Contractor must have an Aerosol Transmissible Disease (ATD) Program as defined in the California Code of Regulations, Title 8, Section 5199, Aerosol Transmissible Diseases as defined at the following site: https://www.dir.ca.gov/Title8/5199.html, and demonstrate compliance with all requirements including, but not limited to, exposure determination, screening procedures, source control measures, use of personal protective equipment, referral procedures, training, immunization, post-exposure medical evaluations/follow-up, and recordkeeping.
2. The Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as Aerosol Transmissible

Disease and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.

3. The Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.

4. The Contractor assumes responsibility for procuring all medical equipment and supplies for use by their employees, agents, subcontractors including Personnel Protective Equipment such as respirators, and provides and documents all appropriate training**.**

F. Hospital Policy 16.27. It is the policy of Zuckerberg San Francisco General (ZSFG) to provide quality patient care and trauma services with compassion and respect, while maintaining patient privacy and safety. ZSFG is committed to providing reasonable opportunities for Health Care Industry Representatives (HCIRs), external representatives/vendors, to present and demonstrate their products and/or services to the appropriate ZSFG personnel. However, the primary objective of ZSFG is patient care and it is therefore necessary for all HCIRs to follow guidelines that protect patient rights and the vendor relationship. Therefore, all HCIR's that will come onto the campus of Zuckerberg San Francisco General Hospital must comply with Hospital Policy 16.27 "PRODUCT EVALUATION AND PHARMACEUTICAL SERVICES: GUIDELINES FOR SALES PERSONNEL, HEALTHCARE INDUSTRY REPRESENTATIVES, AND PHARMACEUTICAL COMPANY REPRESENTATIVES." Before visiting any ZSFG facilities, it is required that a HCIR create a profile with "VendorMate." VendorMate is the company that manages the credentialing process of policy 16.27 for SFGH. For questions, or to register as a HCIR please contact the Director of Materials Management, or designee (during normal business hours) at (415) 206-5315 or sign on to https://sfdph.vendormate.com for details.

G. Hospital Policy 3.28. To ensure that care, treatment, and clinical services provided through contractual agreements are provided safely and effectively. Contractors for Zuckerberg San Francisco Hospital must comply with Hospital Policy 3.28 "CONTRACTING PATIENT CARE SERVICES"

13. **Patient's Rights.** All applicable Patients' Rights laws and procedures shall be implemented.

14. **Under Utilization Reports.** For any quarter that Contractor maintains less than ninety percent (90%) of the total agreed upon units of service for any mode of service hereunder, Contractor shall immediately notify the Contract Administrator in writing and shall specify the number of underutilized units of service.

15. **Quality Assurance.** Contractor agrees to develop and implement a Quality Assurance Plan based on internal standards established by Contractor applicable to the Services as follows:

A. Staff evaluations completed on an annual basis.

B. Personnel policies and procedures in place, reviewed and updated annually.

C. Board Review of Quality Assurance Plan.

16. Performance Plan

Attachment 1 to this Appendix A sets forth the performance measuring requirements of this Agreement.

Attachment 1 to Appendix A

PERFORMANCE IMPROVEMENT PLAN

AND PERFORMANCE MEASURE GRID

Contract Services

AIM: All services provided through contractual agreement are provided safely and effectively for patient care and support services, annually.

Contract Name	Services Provided	Measure Name	Metric (What data is being collected?)
Nor-Cal Medical Temp **DELETE THIS EXAMPLE (ROW)**	**Pharmacy personnel**	**Orientation Check List Completed within 7 Days of First Contact**	**NUM: # of orientation checklists completed within 7 Days** **DENOM: # of orientation checklists completed**
1.			
2.			

Please add more rows for additional contract measures.

Appendix B
Calculation of Charges

1. Method of Payment

Payment to Contractor shall be in accordance…

2. Program Budgets and Invoicing

Program Budget are listed below. The Contractor agrees to comply with its Program Budgets as outlined below. Changes to the budget that do not increase or reduce the maximum dollar obligation of the City are subject to the provisions of the Department of Public Health Policy/Procedure Regarding Contract Budget Changes. The Contractor agrees to comply fully with that policy/procedure.

A. The maximum dollar for each term and funding source shall be as follows:

Program Budget	**Amount**
Base Amount	$XXXX
Contingency Amount	$XXXX
Total Not to Exceed Amount	$XXXX

B. Invoicing.

1. Invoices shall be in a form acceptable to the Contract Administrator, contain all requested information, and shall conform to the requirements specified in Section 3.3.4 of the Agreement.
2. The Contractor shall submit monthly invoices by the 15th working day of each month based upon the number of units of service that were delivered in the immediately preceding month. All deliverables associated with the Services listed in Appendix A, shall be billed at the agreed method of payment in this Appendix B each month.
3. A final closing invoice clearly marked "FINAL," shall be submitted no later than 45 calendar days following the closing date of the Agreement, and shall include only those costs incurred during the referenced period of performance. If costs are not invoiced during this period, all unexpended funding set aside for this Agreement will revert to City.
4. The Contractor understands and agrees that should the City's maximum dollar obligation under this Agreement include State or Federal Medi-Cal revenues, the Contractor shall expend such revenues in the provision of Services to Medi-Cal eligible clients in accordance with City, State, and Federal Medi-Cal

regulations. Should the Contractor fail to expend budgeted Medi-Cal revenues herein, the City's maximum dollar obligation to the Contractor shall be proportionally reduced in the amount of such unexpended revenues. In no event shall State/Federal Medi-Cal revenues be used for clients who do not qualify for Medi-Cal reimbursement.

5. The Contractor further understands and agrees that any State or Federal Medi-Cal funding in this Agreement subject to authorized Federal Financial Participation (FFP) is an estimate, and actual amounts will be determined based on actual services and actual costs, subject to the total compensation amount shown in this Agreement."

C. Contingency

The Contractor understands that, of the maximum dollar obligation listed in section 3.3.1 of this Agreement, contingency amount is included and is neither to be used in Program Budgets attached to this Appendix, or available to Contractor without a modification to this Agreement as specified in Section 12.7 Contract Amendments: Budgeting Revisions. Contractor further understands that no payment of any portion of this contingency amount will be made unless and until such modification or budget revision has been fully approved and executed in accordance with applicable City and Department of Public Health laws, regulations and policies/procedures and certification as to the availability of funds by Controller. Contractor agrees to fully comply with these laws, regulations, and policies/procedures.

Appendix C
Reserved
Insurance Waiver

Appendix D
Data Sharing Agreement

TABLE OF CONTENTS

Article 1 Definitions 1
Article 2 City Data Sharing 1
2.1 Purpose. 1
2.2 Data Sharing Limits. 1
2.3 Secure Data Sharing. 2
2.4 Qualified Personnel. 2
2.5 As Is Data Sharing. 2
2.6 Safeguards. 2
2.7 No Re-Disclosure. 2
2.8 Data Transmission. 2
2.9 Subcontracting. 2
2.10 Liability. 2
2.11 Disposition of Data. 3
2.12 Confidentiality Safeguards. 3

If the Contractor will be receiving data for DPH which must be kept secure, the Data Sharing Agreement will apply to this contract.

Appendix D-3

DATA SHARING AGREEMENT

Recitals

WHEREAS, the Parties wish to state the terms and conditions under which the City will share City Data with Contractor; and

WHEREAS, Contractor represents and warrants that it has a legitimate need for shared City Data, and will limit use of such shared City Data exclusively to those purposes; and

WHEREAS, until Contractor and the City enter into a subsequent data sharing agreement that supersedes this Agreement, Contractor agrees to be bound by all of the terms and conditions set forth herein and further agrees that the terms and conditions of this Agreement constitute the sole Agreement between the Parties regarding the sharing of City Data;

Now, **THEREFORE**, Contractor agrees to be bound by the following terms:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1. **"Breach"** means the unauthorized acquisition, access, use, or disclosure of Protected Health Information ("PHI") that compromises the security or privacy of such information.

1.2. **"City Data"** means all data that provided to Contractor under this Agreement, whether such City Data is individual or aggregated.

1.3. **"Breach"** means the unauthorized acquisition, access, use, or disclosure of City Data, including but not limited to Protected Health Information ("PHI"), that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.

1.4. "**Party**" and "**Parties**" mean the City and Contractor either collectively or individually.

Article 2 City Data Sharing

2.1 **Purpose.**

The City provides Contractor with access to shared City Data solely for the purposes detailed in the Statement of Work. Any use outside of the scope detailed in the Agreement shall constitute a material breach of this Agreement.

2.2 **Data Sharing Limits.**

This Agreement supersedes all pre-existing data sharing agreements, if any, between the City and Contractor. The City reserves the right to revoke, limit, or modify any and all data sharing terms as deemed appropriate by the City acting in its sole discretion.

2.3 **Secure Data Sharing.**

The City will share City Data with Contractor via an encrypted Secure File Transfer Protocol (SFTP)..

2.4 **Qualified Personnel.**

Contractor shall allow only qualified personnel under Contractor's direct supervision to access shared City Data.

2.5 **As Is Data Sharing.**

The City provides Contractor with shared City Data on an "as is" basis with no guarantee as to usefulness. To the fullest extent permissible by applicable law, the City disclaims all warranties, express or implied, including, without limitation, implied warranties of merchantability, fitness for a particular purpose, title and non-infringement.

2.6 **Safeguards.**

Contractor shall safeguard the confidentiality of all shared City Data at all times.

2.7 **No Re-Disclosure.**

Contractor may not redisclose shared City Data.

2.8 **Data Transmission.**

Contractor must ensure that all electronic transmission or exchange of City Data is encrypted according to current industry standards while at rest and in transit. Contractor must also ensure that all data exchanged is used solely for the purposes enumerated in the Agreement.

2.9 **Subcontracting.**

Contractor remains fully responsible for its subcontractor(s) throughout the term and/or after expiration of this Agreement. All Subcontracts must incorporate the terms of this Data Sharing Agreement. To the extent that any subcontractor would have access to shared City Data, each such subcontractor's access must be limited and subject to the same governing terms to the same extent as Contractor's access. In addition, each contract between Contractor and that subcontractor must, except as the City otherwise agrees, include a Business Associate Agreement requiring such subcontractor to comply with all regulatory requirements regarding third-party access, and include a provision obligating that subcontractor to (1) defend, indemnify, and hold the City harmless in the event of a data breach in the same manner in which Contractor would be so obligated, (2) provide cyber and technology errors and omissions insurance with limits identified in Article 5, and (3) destroy or return all City data in an agreed upon machine readable format at the expiration of the subcontract term.

2.10 **Liability.**

Contractor shall comply with all federal and state laws regarding the transmission, storage and protection of all City Data, including but not limited to PHI. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Agreement. In the event City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of City Data, Contractor

shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. For clarity, Contractor, not the City, is responsible for the costs of breach.

2.11 **Disposition of Data.**

At the termination or expiration of this Agreement, or upon written request of the City, Contractor shall destroy, if any, all hardcopy data printed under this Agreement and may be required to sign an attestation that all hardcopy data in its possession was destroyed. Contractor shall ensure that such data has been destroyed in accordance with the U.S. Department of Health and Human Services Secretary's guidance regarding proper destruction of protected health information.

2.12 **Confidentiality Safeguards.**

Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of City Data that it creates, receives, maintains, uses, or transmits pursuant to the Agreement. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of Contractor's operations and the nature and scope of its activities, including at a minimum the following safeguards:

i. General Security Controls

1. **Workstation/Laptop Encryption**. All owned or managed workstations, laptops, tablets, smart phones, and similar devices that process and/or store City Data must be encrypted using a FIPS 140-2 certified algorithm which is 128 bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by City Information Security Office.
2. **Data Encryption**. Any City Data shall be encrypted at rest when stored on network file shares or document repositories.
3. **Server Security**. Servers containing unencrypted City Data must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
4. **Minimum Necessary**. Only the minimum necessary amount of City Data required to perform necessary business functions may be copied, downloaded, or exported.
5. **Removable Media Devices**. All electronic files that contain City Data must be encrypted when stored on any removable media or portable device (i.e., USB thumb drives, floppies, CD/DVD, smart phone, backup tapes, etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128 bit or higher, such as AES.
6. **Antivirus Software**. All owned or managed workstations, laptops, tablets, smart phones, and similar devices that process and/or store City Data must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
7. **Patch Management**. To correct known security vulnerabilities, Contractor shall install security patches and updates in a timely manner on all Contractor-owned or managed workstations, laptops, tablets, smart phones,

and similar devices that process and/or store City Data as appropriate based on Contractor's risk assessment of such patches and updates, the technical requirements of Contractor's systems, and the vendor's written recommendations. If patches and updates cannot be applied in a timely manner due to hardware or software constraints, mitigating controls will be implemented based upon the results of a risk assessment.

8. **Password Policy**. All users must be issued a unique username for accessing City Data. Contractor's must maintain a password policy based on information security best practices as required by 45 CFR § 164.308 and described in NIST Special Publication 800-63B.
9. **Data Destruction**. Upon termination of the Agreement, all City Data must be sanitized in accordance with NIST Special Publication 800-88, Guidelines for Media Sanitization.

ii. System Security Controls.

1. **System Timeout**. The system providing access to City Data must provide an automatic timeout, requiring re-authentication of the user session after no more than thirty (30) minutes of inactivity for applications, and fifteen (15) minutes of inactivity for desktops and laptops.
2. **Warning Banners**. All systems (servers, desktops, laptops, etc.) containing City Data must display a warning banner at login stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.
3. **System Logging**. The system must maintain an automated audit trail which can identify the user or system process which initiates a request for City Data, or which alters City Data. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If City Data is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least one (1) year after occurrence.
4. **Access Controls**. The system must use role-based access controls for all user authentications, enforcing the principle of least privilege.
5. **Transmission Encryption**. All data transmissions of City Data by Contractor outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128-bit key or higher. Encryption can be end-to-end at the network level, or the data files containing City Data can be encrypted. This requirement pertains to any type of City Data in motion such as website access, file transfer, and email.
6. **Intrusion Detection**. All systems involved in accessing, holding, transporting, and protecting City Data that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

iii. Audit Controls.

1. System Security Review. All systems processing and/or storing City Data must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews shall include vulnerability scanning tools.

2. **Log Reviews**. All systems processing and/or storing City Data must have a routine procedure in place to review system logs for unauthorized access.
3. **Change Control**. All systems processing and/or storing City Data must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

iv. Business Continuity/Disaster Recovery Controls.

1. **Disaster Recovery**. Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic City Data in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than twenty-four (24) hours.
2. **Data Backup Plan**. Contractor must have established documented procedures to backup City Data to maintain retrievable exact copies of City Data. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and the amount of time to restore City Data should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of City data.

v. Paper Document Controls.

1. **Supervision of Information**. City Data in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information may be observed by an individual not authorized to access the information. City Data in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
2. **Escorting Visitors**. Visitors to areas where City Data are contained shall be escorted, and City Data shall be kept out of sight while visitors are in the area.
3. **Confidential Destruction**. City Data must be disposed of through confidential means, such as cross-cut shredding and/or pulverizing.
4. **Removal of Information**. City Data must not be removed from the premises of Contractor except for identified routine business purposes or with express written permission of City.
5. **Faxing**. City Data that must be transmitted by fax shall require that Contractor confirms the recipient fax number before sending, takes precautions to ensure that the fax was appropriately received, maintains procedures to notify recipients if Contractor's fax number changes, and maintains fax machines in a secure area.
6. **Mailing**. Paper copies of City Data shall be mailed using a secure, bonded mail service, such as Federal Express, UPS, or by registered U.S. Postal Service (i.e., accountable mail using restricted delivery). All packages must be double packed with a sealed envelope and a sealed outer envelope or locked box

Appendix A
Data Sharing Methods, Ownership, and Dataset Restrictions

WHEREAS the terms for the core health care activities of "Treatment," "Payment," "Health Care Operations," "Research," and "Public Health" are defined in the Privacy Rule at 45 CFR 164.501; and

WHEREAS the terms for "Business Associate" and "Covered Entity" are defined at 45 CFR 160.103; and

I. **Third Party and/or Contractor Requesting Access**

A. **Contact Information**

Name of Organization Requesting System Access:
Organization Name
Address: 123 Folsom St. Ste. 100
San Francisco CA, 94107

B. **Contact Person (s) for the Third Party or Contractor**

Business or Program Owner (Name, Title, Email, Phone):
<Org owner name>
Job Title
<insert email address>
<insert phone number>

II. Description of Purpose of Data Sharing

Business owner; Please write a prose description of the use case and benefits of the data sharing. At a 30,000-ft level, what are we sharing and why are we sharing it? You do not need to specify the individual data elements or technical format. The purpose of this section is to limit the sharing and use of the data to the goals we are seeking to accomplish. It is okay to be broad to allow additional data files under your use case, but the use case does need to be described. I.e. "We are working together with the Third Party to further care coordination for patients enrolled in the State of California's CalAIM programs. The parties agree to exchange data for permitted purposes under this program."

III. **Basis for Data Sharing**

Contractor represents to the City that the use cases and purposes for data sharing and exchange fall into the following indicated categories:

Contractor is a Covered Entity OR is acting as Business Associate, including a formal signed Business Associate Agreement, of a Covered Entity for the use case/purpose represented in this agreement:

☐ **Treatment:**

☐ **Payments:** (further specify)

- ☐ Eligibility, coverage, and/or benefits determination
- ☐ Medical necessity reviews, prior authorizations, justifications, etc.
- ☐ Utilization management and reviews
- ☐ Billing and claims activities

☐ **Healthcare Operations:** (further specify)

☐ Population health improvement and/or cost-reduction

☐ Care coordination and/or case management

☐ Quality reviews/assessments, compliance reviews, audits, licensing and/or credentialing activities, etc.

☐ General administrative activities (i.e. business planning and development, such as conducting cost-management and planning)

☐ **Public Health:**

☐ **Research:** currently involved in conducting a research study, which may include a pharmaceutical product, biological product, device, or diagnostic agent through certain clinical research (the "Study") at a City facility. Data Sharing Agreement does not represent approval of a research study. The Study must have an approved Clinical Trial Agreement or Statement of Work.

☐ **Laboratory and/or Diagnostic Submitter;** engaging the City or a City affiliate to provide laboratory and/or diagnostic services that do not fit in the categories above

☐ **Other: <must describe – strike if not used>**

Contractor is NOT a Covered Entity AND is NOT acting as Business Associate of a Covered Entity:

☐ **CalAIM HHS Data Exchange Framework Participant:** Under California Assembly Bill 133, contractor is a signatory to the Data Sharing Agreement and abides by the terms of the agreement. See CalHHS DxF Signatory List.

☐ **Laboratory and/or Diagnostic Submitter;** engaging the City or a City affiliate to provide laboratory and/or diagnostic services

☐ **Other: <must describe – strike if not used>**

IV. **Technical Transmission Methods:**

Contractor and the City intend, in accordance with the prior terms with this agreement, to use the following secure technical transmission methods to facilitate the data sharing and exchange:

☐ **Healthcare Interoperability Networks:** includes but is not limited to exchanging files such as C-CDA documents over established, secure, HIPAA-compliant networks. These networks include but are not limited to Epic Care Everywhere, Epic Payer Platform, Carequality, TEFCA QHINs, state and regional HIEs, etc. Each network has terms and conditions which shall apply to the parties; this agreement shall not supersede those terms and conditions and is only meant to indicate intent and cooperation between the parties to use these established mechanisms for support of the stated use cases and/or purposes.

☐ **Interfaces & APIs**: Includes but is not limited to HL7, FHIR, USCDI, or other formatted standards to share data via secure transmission channels including but not limited to VPNs, TLS, IPsec, etc. These methods do not use established, third-party networks and generally require a point-to-point connection between Contractor and the Department.

☐ **Data Files:** Includes the transfer of various format files included but not limited to data tables, comma separated values, spreadsheets, etc. for use cases such as supplemental files, rosters, population data extracts, etc. The files may be transferred via Secure File Transfer Protocol (SFTP), controlled access sites, or other secure methods in compliance with the provisions of this agreement.

☐ **Software/Hardware**: Includes but is not limited to software and hardware when the purpose of the software/hardware is to gather and externally transmit data. Examples include hardware specifically installed on laboratory analyzers to gather and transmit specimen result data in support of Research or software installed to aggregate and transmit RFID tracking data of medications in support of Healthcare Operations such as business operations analysis and improvement.
☐ **Other: <must describe – strike if not used>**

V. Direction of Data Sharing & Retention of Data Ownership

Contractor and the City intend to share or exchange data in one or both of the following directions and, Contractor acknowledges the following regarding City Data ownership:

☐ **City (outbound) to Contractor**: the source of the data is generated by the City and is to be shared with the Contractor in support of the aforementioned use cases and purposes.
(Select only one option below)

☐ City Data ownership is retained by the City and all aforementioned terms for data re-disclosure, disclosure restrictions, Breach, disposition, etc. shall apply

☐ City Data shared with the Contractor, in accordance with applicable laws and provisions, shall become Contractor Data. Contractor shall bear the sole responsibility for all associated liability, security, confidentiality, etc. of the data.

☐ **Contractor to City (inbound)**: the source of the data is generated by the Contractor and is to be shared with the City in support of the aforementioned use cases and purposes. Data shared with the City shall become City Data.

VI. Dataset Category Restrictions

Specifics of which data elements are included in the file, frequency, matching of shared clients, and transmission testing/monitoring will need further specification development, alignment with appropriate business needs, and resource assignment in partnership between Contractor and Department.

☐ **General, San Francico Health Network:**

- Medical and mental health data.
- EXCLUDES data from Occupational Health Services (e.g. City & County employees).
- EXCLUDES patients seen only by Maternal Child and Adolescent Health
- EXCLUDES patients seen only by Substance Use Treatment services nor Substance Use services provided to patients within the population.

☐ **Limited, San Francisco Health Network:**

- Medical and mental health data for a specific patient population or list of DPH programs.
- EXCLUDES data from Occupational Health Services (e.g. City & County employees).
- EXCLUDES patients seen only by Maternal Child and Adolescent Health

- EXCLUDES patients seen only by Substance Use Treatment services nor Substance Use services provided to patients within the population.

☐ **Occupational Health Services (e.g. City and County employees):**

- Medical and mental health data.
- INCLUDES data from Occupational Health Services.
- EXCLUDES patients seen only by Maternal Child and Adolescent Health
- EXCLUDES patients seen only by Substance Use Treatment services nor Substance Use services provided to patients within the population.

☐ **Substance Use Treatment services/programs data using Epic:**

- INCLUDES Substance Use Treatment patients and services.
- LIMITED to those patients who signed a data sharing consent within the last 12 months releasing data protected under 42 CFR part 2.

Appendix E

Business Associate Agreement

APPENDIX E

San Francisco Department of Public Health

Business Associate Agreement

This Business Associate Agreement ("BAA") supplements and is made a part of the Agreement by and between the City and County of San Francisco, a Hybrid Entity designated under HIPAA, referred herein as the Covered Entity ("CE"), and [insert name of contractor] ("Contractor"), the Business Associate ("BA"), dated [insert date] (the "Agreement").

RECITALS

A. CE, by and through the [insert Department name] ("[Insert Acronym]"), wishes to disclose, allow access to, or allow collection of certain information to BA pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI") (defined below).

B. For purposes of the Agreement and this BAA, CE requires Contractor, even if Contractor is also a covered entity under HIPAA, to comply with the terms and conditions of this BAA as a BA of CE.

C. CE and BA are committed to complying with all federal and state laws governing the confidentiality, privacy, and security of health information disclosed to BA pursuant to the Agreement, including, but not limited to the Standards for PHI under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated there under by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws with respect to health information, mental health information, and substance use treatment information, including, but not limited to, California Civil Code §§ 56, et seq., California Health and Safety Code § 1280.15, California Civil Code §§ 1798, et seq., California Welfare & Institutions Code §§5328, et seq., and the regulations promulgated there under (the "California Regulations"), and 42 CFR Part 2.

D. CE is required to enter into an agreement containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations ("CFR") and contained in this BAA.

E. BA enters into agreements with CE that require the CE to disclose to BA, or allow BA to create, collect, use, access, maintain, or transmit for or on CE's behalf, certain identifiable health information. The parties desire to enter into this BAA to permit BA to disclose, create, collect, use, access, maintain, or transmit such information and comply with the BA requirements of HIPAA, the HITECH Act, and the corresponding regulations.

1. Definitions. For purposes of this BAA, the Parties agree that each term below and any capitalized term used in this BAA, but not otherwise defined, has the meaning given to that term in the HIPAA Rules (as defined below), and as each may be amended from time to time.

- **a. Breach** means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the Privacy Rule which compromises the security or privacy of the PHI, as defined in 45 CFR §164.402.
- **b. Breach Notification Rule** means the portion of HIPAA set forth in Subpart D of 45 CFR Part 164.
- **c. Business Associate** means a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information received from a covered entity, but other than in the capacity of a member of the workforce of such covered entity or arrangement, as defined in 45 CFR §160.103.
- **d. Covered Entity** has the meaning given to such term under the Privacy Rule and the Security Rule, including 45 CFR §160.103.

e. **Data Aggregation** means the combining of PHI by the BA with the PHI received by the BA in its capacity as a BA of one or more other covered entity, to permit data analyses that relate to the Health Care Operations of the respective covered entities, and the meaning given to such term in 45 CFR §164.501.

f. **Designated Record Set** has the meaning given to such term under the Privacy Rule, including 45 C.F.R. Section 164.501.

g. **Electronic PHI or ePHI** means any PHI maintained or transmitted by electronic media as defined in 45 CFR §160.103.

h. **Health Care** has the meaning given to such term under the Privacy Rule, including 45 CFR §164.103.

i. **Health Care Component** has the meaning given to such term under the Privacy Rule, including 45 CFR §164.103.

j. **Health Care Operations** has the meaning given to such term under the Privacy Rule, including 45 CFR §164.501.

k. **HIPAA Rules** means the Privacy, Security, Breach Notification, and Enforcement Rules set forth in 45 CFR Part 160 and Part 164.

l. **Hybrid Entity** has the meaning given to such term under the Privacy Rule, including 45 CFR §164.103.

m. **Privacy Rule** means that portion of HIPAA set forth in 45 CFR Part 160 and Part 164, Subparts A and E.

n. **Protected Health Information or PHI** has the meaning given to such term under the Privacy Rule, including 45 CFR §§160.103 and 164.501, limited to the information created, maintained, stored, transmitted, or received by BA from or on behalf of CE, or another BA of CE.

o. **Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, and as defined in the Security Rule, including 45 CFR §164.304.

p. **Security Rule** means the Security Standards for the Protection of Electronic Health Information provided in 45 CFR Part 160 & Part 164, Subparts A and C.

q. **Unsecured PHI** has the meaning given to such term under 42 U.S.C. §17932(h) and 45 CFR §164.402.

2. Obligations of Business Associate.

a. User Training. The BA shall provide, and shall ensure that BA subcontractors, provide, training on PHI privacy and security, including HIPAA and HITECH and its regulations, to each employee or agent that will access, use or disclose Protected Information, upon hire and/or prior to accessing, using or disclosing Protected Information for the first time, and at least annually thereafter during the term of the Agreement. BA shall maintain, and shall ensure that BA subcontractors maintain, records indicating the name of each employee or agent and date on which the PHI privacy and security trainings were completed. BA shall retain, and ensure that BA subcontractors retain, such records for a period of seven years after the Agreement terminates and shall make all such records available to CE within fifteen (15) calendar days of a written request by CE.

b. Permitted Uses and Disclosures. BA may use, access, and/or disclose PHI only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. Further, BA may use, access, and/or disclose PHI as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health

Care Operations of CE (see45 CFR §§164.502, 164.504(e)(2), and 164.504(e)(4)(i)]. If BA discloses PHI to a third party, if the disclosure is required by law, or otherwise BA must obtain, prior to making such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided under this BAA and used or further disclosed only as required by law or for the purpose for which it was disclosed to this third party and (ii) an agreement from this third party to notify BA immediately of any breaches of the confidentiality of the PHI, to the extent it has knowledge of the breach.

c. Prohibited Uses and Disclosures. BA will not use, access, or disclose PHI other than as permitted or required by the Agreement, this BAA, and under the Privacy Rule, or as required by law. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted under 42 U.S.C. §17935(d)(2), and, 45 CFR §164.502(a)(5)(ii); however, this prohibition shall not affect payment by CE to BA for services provided under the Agreement.

d. Appropriate Safeguards. BA will use appropriate safeguards to protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the CE, and prevent any use or disclosure of PHI other than as permitted by the Agreement or this BAA, including, but not limited to, administrative, physical and technical safeguards under the Security Rule, including, but not limited to, 45 CFR §§164.306, 164.308, 164.310, 164.312, 164.314 164.316, and 164.504(e)(2)(ii)(B). BA will comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 CFR §164.316, and 42 U.S.C. §17931. BA is responsible for any civil penalties assessed due to an audit or investigation of BA, in accordance with 42 U.S.C. §17934(c).

e. Agreements with Subcontractors and Agents. BA will ensure that any of its agents and subcontractors that have access to, or which create, receive, maintain or transmit PHI for or on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph 2.c. above (see 45 CFR §§164.504(e)(2) through (e)(5), and164.308(b)]. BA must mitigate the effects of any such violation.

f. Accounting of Disclosures. BA will document any disclosures of PHI made by it to account for such disclosures as required by 45 CFR §164.528(a). BA will also make available information related to such disclosures as would be required for CE to respond to a request for an accounting of disclosures in accordance with 45 CFR §164.528. At a minimum, BA will furnish CE the following with respect to any covered disclosures by BA: (i) the date of disclosure of PHI; (ii) the name of the entity or person who received PHI, and, if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure which includes the basis for such disclosure.

i. BA will furnish to CE information collected in accordance with this Section 2(e), within ten business days after written request by CE, to permit CE to make an accounting of disclosures as required by 45 CFR §164.528, or in the event that CE elects to provide an individual with a list of its business associates, BA will provide an accounting of its disclosures of PHI upon request of the individual, if and to the extent that such accounting is required under the HITECH Act or under HHS regulations adopted in connection with the HITECH Act.

ii. In the event an individual delivers the initial request for an accounting directly to BA, BA will forward such request to Covered Entity within ten (10) business days of receipt.

g. Access to PHI by Individuals. Upon request, BA agrees to provide CE copies of the PHI maintained by BA in a Designated Record Set in the time and manner designated by CE to enable CE to respond to an individual's request for access to PHI under 45 CFR §164.524. In the event any individual or personal representative requests access to the individual's PHI directly from BA, BA will forward that request to CE within ten (10) business days. Any disclosure of, or decision not to disclose, the PHI requested by an individual or a personal representative and compliance with the requirements applicable to an individual's right to obtain access to PHI shall be the sole responsibility of CE.

h. Amendment of PHI. Upon request and instruction from CE, BA will amend PHI or a record about an individual in a Designated Record Set that is maintained by, or otherwise within the possession of, BA as directed by CE in accordance with procedures established by 45 CFR §164.526. Any request by CE to amend such information will be completed by BA within fifteen (15) business days of CE's request. If an individual request an amendment of PHI directly from BA or its agents or subcontractors, BA must forward any such request to CE within ten (10) business days. Any amendment of, or decision not to amend, the PHI or record as requested by an individual and compliance with the requirements applicable to an individual's right to request an amendment of PHI will be the sole responsibility of CE.

i. Governmental Access to Records. BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining CE's or BA's compliance with HIPAA and this BAA.

j. Minimum Necessary. BA, its agents and subcontractors shall request, use, access, and disclose only the minimum amount of PHI necessary to accomplish the intended purpose of such use, access, or disclosure, or request. (see 42 U.S.C. Section 17935(b) and 45 CFR §164.514(d)].

k. Data Ownership. BA acknowledges that BA has no ownership rights with respect to the Protected Information provided by CE to BA or created, received, maintained or transmitted by BA or BA's agents or subcontractors under the Agreement, including any and all forms thereof.

l. Notification of Suspected or Actual Breach. BA shall notify CE within five (5) calendar days of any breach of PHI; any use or disclosure of PHI not permitted by the Agreement or this BAA; any Security Incident (except as otherwise provided below) related to PHI, and any use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the BA to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take prompt corrective action to cure any deficiencies and any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 42 U.S.C. Section 17932; 45 C.F.R. 164.410; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]

i. **Unsuccessful Security Incident Attempts**: The Parties acknowledge and agree that this Section constitutes notification by BA to CE of the ongoing existence and occurrence of attempted Security Incidents that do not result in and/or that BA does not anticipate will result in unauthorized access, use, disclosure, modification, or destruction of information or interference with

system operations in an information system (including, for example, pings on BA's firewall, port scans, attempts to log onto a system or enter a database with an invalid password or username, denial-of-service attacks that do not result in the system being taken off-line, or malware such as worms or viruses). Unless requested by CE, no further notification of unsuccessful Security Incident attempts is required.

ii. **Successful Security Incident Attempts:** BA must notify the City within five (5) calendar days of any Security Incident attempt that results in, or that BA anticipates may result in, unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system (such as continuous and/or persistent Security Incident attempts or a suspicious pattern of Security Incident attempts).

iii. **Written Request for Security Incident Report**: Upon CE's request, BA must provide CE a written Security Incident Report that: (a) identifies the categories of Security Incident attempts; (b) indicates whether BA believes its current defensive security measures are adequate to address Security Incidents, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures BA will implement to address security inadequacies.

m. Breach Pattern or Practice by Business Associate's Subcontractors and Agents. Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(iii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or this BAA, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the contractual arrangement with its subcontractor or agent, if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or this BAA within five (5) calendar days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

n. Audits, Inspection and Enforcement. Within ten (10) calendar days of a request by CE, BA will provide CE with a copy of its most recent independent HIPAA compliance report (AT-C 315), HITRUST certification or other similar mutually agreed upon independent standards-based third-party audit report. CE agrees not to re-disclose BA's audit report. If BA does not have such a report, BA will allow CE or its agents or subcontractors to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA for the purpose of determining whether BA has complied with this BAA or maintains adequate security safeguards. BA shall notify CE within five (5) business days of learning that BA has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights or other state or federal data privacy or security-enforcement government entity.

3. Termination.

a. Material Breach. A breach by BA, or BA's agent or subcontractor, of any obligations under this BAA, as determined by CE, shall constitute a material breach of the Agreement and this BAA and shall provide grounds for immediate termination of the Agreement and this BAA, any provision in the Agreement to the contrary notwithstanding. (45 CFR §164.504(e)(2)(iii).)

b. Judicial or Administrative Proceedings. CE may terminate the Agreement and this BAA, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or

other security or privacy laws is made in any administrative or civil proceeding in which BA has been joined.

c. Effect of Termination. Upon termination of the Agreement and this BAA for any reason, BA shall, at the option of CE, return or destroy all PHI that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this BAA to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible (45 C.F.R. §164.504(e)(2)(ii)(J)). If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI. Per the Secretary's guidance, the City will accept destruction of electronic PHI in accordance with the standards enumerated in the NIST SP 800-88, Guidelines for Media Sanitization. The City will accept destruction of PHI contained in paper records by shredding, burning, pulping, or pulverizing the records so that the PHI is rendered unreadable, indecipherable, and otherwise cannot be reconstructed.

d. Civil and Criminal Penalties. BA understands and agrees that it is subject to civil or criminal penalties applicable to BA for unauthorized use, access or disclosure of PHI in accordance with the HIPAA Regulations and the HITECH Act including, 42 U.S.C. §17934(c).

e. Disclaimer. CE makes no warranty or representation that compliance by BA with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations or corresponding California law provisions will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

4. Amendment to Comply with Law.

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the updated standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable state or federal laws. CE may terminate the Agreement upon thirty (30) calendar days written notice in the event (i) BA does not promptly enter into negotiations to amend the Agreement or this BAA when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

5. Litigation or Administrative Proceedings.

BA shall notify CE within forty-eight (48) hours of any litigation or administrative proceedings commenced against BA or its agents or subcontractors. In addition, BA shall make itself, and any subcontractors, employees and agents assisting BA in the performance of its obligations under the Agreement or this BAA, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or

employees based upon a claimed violation of HIPAA, the HITECH Act, the HIPAA regulations, or other state or federal laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.

6. No Third-Party Beneficiaries.

Nothing express or implied in the Agreement or this BAA is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

7. Interpretation.

The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA. This BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations, and other state and federal laws related to security and privacy of health information. The parties agree that any ambiguity in the terms of this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the HIPAA regulations, and other state and federal laws related to security and privacy of health information.