



---

**Appendix E**  
**Template Contract for Brokerage Services**

---

# OCIP ADMINISTRATOR SERVICES CONTRACT

## CCSF

This OCIP Administration Services Contract (the "Contract") is made this \_\_\_\_\_ by and between CCSF and BROKER

### RECITALS:

WHEREAS, CCSF is considering a OCIP in order to provide certain coverage for CCSF and its contractors and

WHEREAS, CCSF desires a firm of qualified insurance agents with the expertise and experience to design, market and administer a program of insurance and services connected with the operation of a Owner Controlled Insurance Program (the "Program"), which will result in increased buying power, uniform insurance, broad coverage, and reduced cost for CCSF; and

WHEREAS, the Program shall include general liability, workers' compensation and employer's liability, and excess liability, and builders risk; and

WHEREAS, because of the complexity in the number of projects and construction team members that will be involved in the program's construction effort, CCSF desires a firm of competent insurance agents to assist in the procurement of, and supervision of, the construction team members, such firm to be thoroughly experienced and with the staff and resources capable of assisting CCSF in managing the Program through the completion of the program term, including extended terms there of;

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

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

### AGREEMENT

#### 1. **CERTIFICATION OF FUNDS; BUDGET AND FISCAL PROVISIONS, TERMINATION IN THE EVENT OF NON-APPROPRIATION**

- 1.1 This Contract is subject to the budget and fiscal provisions of the CCSF's Charter. This Contract shall become effective on the date the Controller has certified to the availability of funds and BROKER has been notified in writing (the "Effective Date"). Charges will accrue only after prior written authorization certified by the Controller, and the amount of CCSF's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.
- 1.2 This Contract will terminate without penalty, liability or expense of any kind to CCSF 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 Contract will terminate,

without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

- 1.3 CCSF has no obligation to make appropriations for this Contract in lieu of appropriations for new or other agreements. CCSF budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. BROKER's assumption of risk of possible non-appropriation is part of the consideration for this Contract.
- 1.4 THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS CONTRACT.

## **2. PROGRAM DESCRIPTION**

- 2.1 Obligation of BROKER. During the Term (defined below), BROKER shall perform the services and accomplish the tasks identified in Attachment B. Scope of Services. BROKER will be responsible for providing the Scope of Services in a timely, cost-effective and professional manner. BROKER agrees to perform its services hereunder as an independent contractor, and shall devote such time and commit such resources as are necessary in connection therewith.
- 2.2 Obligation of All BROKER Employees. All employees of BROKER who are involved in the provision of services hereunder shall perform all services and complete all duties with a high degree of skill and competence.

## **3. IMPLEMENTATION AND PERFORMANCE OF THE CONTRACT**

Work under this Contract shall be performed only by competent personnel under the supervision of an in the employment of BROKER. BROKER will comply with CCSF's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at CCSF's request, must be supervised by BROKER. BROKER shall commit adequate resources to complete the project within the project schedule specified in this Contract.

- 3.1 Key BROKER Representatives. Key BROKER Representatives include:

- Account Executive
- Senior Account Advisor
- Account Manager – Master Policy & Invoicing
- OCIP Manager
- Software Data Manager
- Claims Manager
- Claims Advisor
- Design & Marketing

The BROKER Account Executive shall be authorized to act on behalf of BROKER with respect to the obligations, responsibilities and rights of BROKER under this Contract, and to accept all communications from CCSF with respect to this Contract. Key BROKER Representatives shall be available to consult with CCSF at all reasonable times, and CCSF will

be entitled to act in reliance upon the instructions and decisions of Key BROKER Representatives insofar as they relate to this Contract.

- 3.2 Approval of Changes. CCSF must approve any change in Key BROKER Representatives. Any request for change in the Key BROKER Representatives must be submitted to CCSF in writing forty-five (45) days prior to assignment.
- 3.3 Notices. All notices, requests, reports and other communications under this Contract shall be deemed to be duly given if and when hand-delivered, delivered by nationally recognized courier service, or mailed by certified or registered mail with postage prepaid to the following address (whether actually received or not):

If to CCSF to:  
CCSF

If to BROKER to: BROKER

Any party may change its address for purposes of this Contract by giving notice of such change to all other parties.

- 3.4 Progress Reports. Within ten (10) business days from the end of the month, furnish to CCSF a report in form and content satisfactory to CCSF. The information in the report shall be current for the period ending on the first day of the previous month.
- 3.5 Program Records and Audit.
- (a) Upon written request by CCSF, BROKER shall make available to CCSF or CCSF's representative, at the BROKER or such other location mutually agreed upon, all of its records and other work product relating to this Contract, including but not limited to records documenting the following:
    - (i) General statistics relating to an approved list of subcontractors by location, copies of all loss notices and loss summaries of third-party claims; and
    - (ii) Such other program data maintained by BROKER that CCSF may from time to time require.
  - (b) BROKER shall keep and make available to CCSF, during regular business hours, accurate records and reports which allow CCSF to readily perform an evaluation of BROKER' performance as set forth in section 2.6, items (a) through (f)
  - (c) BROKER shall maintain such data and record in an accessible location and condition for a period of not less than three years after final payment under this Contract or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Contract shall be the same rights conferred upon CCSF by this Article.

#### 4. TERM

Subject to Article 1, this Contract shall commence on \_\_\_\_\_, and unless earlier terminated pursuant to Article 11, shall continue in full force and effect for a period of \_\_\_\_\_ months pursuant to the construction program (the "Term"). The term may be extended upon agreement in writing by BROKER and CCSF in one-year increments. However, the expiration of this contract does not relieve BROKER of its responsibilities to provide Closeout Services as outlined in Attachment B. Scope of Services.

#### 5. COMPENSATION

- 5.1 Management Fee. CCSF shall pay to BROKER as compensation for services performed pursuant to this Contract annual amounts set out below (collectively, the "Management Fee"). It is agreed that BROKER'S management Fee is developed from certain program assumptions as listed in Attachment A – Program Assumptions. The annual amounts payable to BROKER during the fifty-two (52) month term are as follows:

<u>Year</u>	<u>Management Fee</u>
1	
2	
Total	

- 5.1.1 Annual payment periods shown above begin on the Effective Date of this Contract. Annual fees are to be paid in advance in equal quarterly installments. Payments made after the initial payment are contingent upon the [Department Head's] determination that BROKER has satisfactorily performed its work in the preceding quarter.
- 5.1.2 Invoices furnished by BROKER under this Contract must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. All amounts paid by CCSF to BROKER shall be subject to audit by CCSF.
- 5.1.3 Payment shall be made by CCSF to BROKER at the address specified in the section entitled "Notices to the Parties."
- 5.2 In no event shall the amount of this Contract exceed **[insert whole dollar amount in numbers and words -- no pennies]**.
- 5.3 No charges shall be incurred under this Contract nor shall any payments become due to BROKER until reports, services, or both, required under this Contract are received from BROKER and approved by [insert name of department] as being in accordance with this Contract. CCSF may withhold payment to BROKER in any instance in which BROKER has failed or refused to satisfy any material obligation provided for under this Contract.
- 5.4 In no event shall CCSF be liable for interest or late charges for any late payments.

**[If the contract will involve the use of subcontracts, include 5.5:]**

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

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

5.6 Commissions. BROKER OCIP Management Fee shown in section 5.1 shall be full and complete compensation for OCIP services during the term of this Contract. BROKER and its officers, agents and employees shall not accept or receive any commissions or payments from insurance companies, agents or affiliates as a result of or in relation to any workers' compensation, general liability, excess liability, or other insurance contract that BROKER places or causes to be issued for CCSF and directly related to the Program. Commissions paid to BROKER or to an intermediary for insurance placements are not precluded by this Contract.

**6. GUARANTEED MAXIMUM COST**

6.1 The CCSF's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

6.2 Except as may be provided by laws governing emergency procedures, officers and employees of the CCSF are not authorized to request, and the CCSF is not required to reimburse the BROKER for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

6.3 Officers and employees of the CCSF are not authorized to offer or promise, nor is the CCSF required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

6.4 The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

**7. INSURANCE REQUIREMENTS**

7.1 Required Insurance Coverage for BROKER. Without in any way limiting BROKER's liability pursuant to the "Indemnification" article of this Contract, BROKER will maintain throughout the Contract term insurance in the following limits of liability and coverages:

Coverage	Limits of Liability
Worker's Compensation	
▪ State Benefits	Statutory

▪ Employers Liability	\$ 1,000,000 Each Accident \$ 1,000,000 Disease – Policy Limit \$ 1,000,000 Disease – Each Employee
General Liability	\$ 4,000,000 General Aggregate \$ 4,000,000 Products/Completed Ops Aggregate \$ 2,000,000 Personal & Advertising Liability \$ 2,000,000 Each Occurrence \$ 500,000 Fire Damage (any one fire) \$ 10,000 Medical Payments
Errors and Omissions Liability	\$5,000,000 Each Occurrence

Upon written request, BROKER shall provide satisfactory evidence of insurance to CCSF for the coverages listed above at the stated limits of liability.

- 7.2 All policies shall provide thirty days' advance written notice to CCSF of cancellation mailed to the following address:
- 7.3 Should any of the required insurance be provided under a claims-made form, BROKER shall maintain such coverage continuously throughout the term of this Contract and, without lapse, for a period of three years beyond the expiration of this Contract, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Contract, such claims shall be covered by such claims-made policies.
- 7.4 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.
- 7.5 Should any required insurance lapse during the term of this Contract, requests for payments originating after such lapse shall not be processed until the CCSF receives satisfactory evidence of reinstated coverage as required by this Contract, effective as of the lapse date. If insurance is not reinstated, the CCSF may, at its sole option, terminate this Contract effective on the date of such lapse of insurance.
- 7.6 Before commencing any operations under this Contract, BROKER must furnish to CCSF certificates of insurance, and additional insured policy endorsements, in form and with insurers satisfactory to CCSF, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon CCSF request.
- 7.7 Approval of the insurance by CCSF shall not relieve or decrease the liability of BROKER hereunder.

## 8. OTHER AGREEMENTS



- 8.1 Relationship between CCSF and BROKER. Nothing contained herein shall cause either party to be liable or responsible for any debt, liability or obligation of the other party to any third person, unless such liability or responsibility is expressly assumed in writing. There are no third-party beneficiaries of this Contract. This Contract represents an agreement between independent parties. BROKER and the agents and employees of BROKER shall act in an independent capacity and not as officers or employees of CCSF, and neither BROKER nor any of its employees, contractors, or agents shall have the authority to bind CCSF to any contract or liability of any nature whatsoever. Neither CCSF nor its employees are employees of BROKER, and neither BROKER nor any employee or agent of BROKER is an employee of CCSF. In no event shall this Contract be construed, and the parties hereto expressly disclaim any intention, to create an employer/employee relationship, a partnership or joint venture by reason of the provisions herein.
- 8.2 Ownership of Results. All files created and/or maintained by BROKER in relation to the Program shall be the property of CCSF. CCSF shall be the absolute and unqualified owner of all documents and electronic media prepared by or for BROKER pursuant to this project or in connection with this Contract or the Program. Any interest of BROKER or its subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by BROKER or its subcontractors in connection with services to be performed under this Contract, shall become the property of and will be transmitted to CCSF. A system for the perpetual record-keeping shall be maintained by BROKER until each file is closed and for a period of no less than five (5) years thereafter. No information produced as a result of any agreement or contract with CCSF can be released without prior written consent of CCSF. Promptly upon termination of this Contract, BROKER will forward or return all such records, files, ledgers and other material to CCSF. BROKER may retain and use copies for reference and as documentation of its experience and capabilities.
- 8.3 Training and Facilitation Services. BROKER shall provide such training and facilitation services to the CCSF employees who are directly involved in the construction program, as CCSF may reasonably request.

## 9. INDEMNITY TO CCSF

BROKER shall indemnify and save harmless the CCSF and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of BROKER or loss of or damage to property, resulting directly or indirectly from BROKER's performance of this Contract, including, but not limited to, the use of BROKER's facilities or equipment provided by the CCSF or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on the CCSF, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Contract, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the CCSF and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on BROKER, its subcontractors or either's agent or employee.

In addition to BROKER's obligation to indemnify the CCSF, BROKER specifically acknowledges and agrees that it has an immediate and independent obligation to defend the CCSF 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 BROKER by the CCSF and continues at all times thereafter.

BROKER shall indemnify and hold the CCSF harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by the CCSF, or any of its officers or agents, of articles or services to be supplied in the performance of this Contract.

## 10. REPRESENTATIONS OF BROKER

BROKER represents to CCSF as follows:

- 10.1 Corporate Organization: Good Standing. BROKER is a \_\_\_\_\_ Corporation duly organized, validly existing and in good standing under the laws of the State \_\_\_\_\_, and has the power and authority to enter into this Contract and to fulfill its duties under this Contract.
- 10.2 Corporate Authorization. The execution and delivery of this Contract and the fulfillment by BROKER of the duties contemplated hereby have been duly authorized by all necessary actions on the part of BROKER, and this Contract, as of the Effective Date, will constitute a valid and binding Contract of BROKER, enforceable against BROKER in accordance with its terms.
- 10.3 No Violation by Virtue of the Contract. Neither the execution and delivery of this Contract nor the fulfillment by BROKER of the duties set forth herein will constitute a violation of, or be in conflict with, or constitute an event that, with the giving of notice or the passage of time, or both, would result in a breach of, constitute a default under, or create (or cause the acceleration of the maturity of) any debt, obligation or liability affecting this Contract under:
- (i) Any term or provision of any applicable federal or state statute, law, rule, regulation or any resolutions of any relevant governmental entity having jurisdiction over BROKER;
  - (ii) Any contract, permit, agreement or indenture to which BROKER is subject; or
  - (iii) Any judgment, decree, order, regulation or rule of any governmental entity applicable to CCSF.
- 10.4 Accuracy; Completeness. No statement or representation by BROKER in this Contract contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact relevant to such statement or representation necessary to make the information contained in such statement or representation not misleading.
- 10.5 Professional Capacity. BROKER has the professional and financial resources necessary to fulfill its obligations under this Contract.

## 11. DEFAULT

- 11.1 Each of the following shall constitute an event of default (“Event of Default”) under this Contract:
- 11.1.1 BROKER fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Contract: 7, 15, 20.3, 20.5, 20.9, 20.13, or 20.17.
  - 11.1.2 BROKER fails or refuses to perform or observe any other term, covenant or condition contained in this Contract, and such default continues for a period of ten days after written notice thereof from CCSF to BROKER.
  - 11.1.3 BROKER (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of BROKER or of any substantial part of BROKER's property or (E) takes action for the purpose of any of the foregoing.
  - 11.1.4 A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to BROKER or with respect to any substantial part of BROKER's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of BROKER.
- 11.2 On and after any Event of Default, CCSF shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Contract or to seek specific performance of all or any part of this Contract. In addition, CCSF shall have the right (but no obligation) to cure (or cause to be cured) on behalf of BROKER any Event of Default; BROKER shall pay to CCSF on demand all costs and expenses incurred by CCSF in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. CCSF shall have the right to offset from any amounts due to BROKER under this Contract or any other agreement between CCSF and BROKER all damages, losses, costs or expenses incurred by CCSF as a result of such Event of Default and any liquidated damages due from BROKER pursuant to the terms of this Contract or any other agreement.
- 11.3 All remedies provided for in this Contract 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.

## 12. TERMINATION FOR CONVENIENCE

- 12.1 CCSF shall have the option, in its sole discretion, to terminate this Contract, at any time during the term hereof, for convenience and without cause. CCSF shall exercise this option by giving BROKER written notice of termination. The notice shall specify the date on which termination shall become effective.
- 12.2 Upon receipt of the notice, BROKER shall commence and perform, with diligence, all actions necessary on the part of BROKER to effect the termination of this Contract on the date specified by CCSF and to minimize the liability of BROKER and CCSF to third parties as a result of termination. All such actions shall be subject to the prior approval of CCSF. Such actions shall include, without limitation:
  - 12.2.1 Halting the performance of all services and other work under this Contract on the date(s) and in the manner specified by CCSF.
  - 12.2.2 Not placing any further orders or subcontracts for materials, services, equipment or other items.
  - 12.2.3 Terminating all existing orders and subcontracts.
  - 12.2.4 At CCSF's direction, assigning to CCSF any or all of BROKER's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, CCSF shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
  - 12.2.5 Subject to CCSF's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
  - 12.2.6 Completing performance of any services or work that CCSF designates to be completed prior to the date of termination specified by CCSF.
  - 12.2.7 Taking such action as may be necessary, or as the CCSF may direct, for the protection and preservation of any property related to this Contract which is in the possession of BROKER and in which CCSF has or may acquire an interest.
- 12.3 Within 30 days after the specified termination date, BROKER shall submit to CCSF an invoice, which shall set forth each of the following as a separate line item:
  - 12.3.1 The reasonable cost to BROKER, without profit, for all services and other work CCSF directed BROKER to perform prior to the specified termination date, for which services or work CCSF has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of BROKER's direct costs for services or other work. Any overhead allowance shall be separately itemized. BROKER may also recover the reasonable cost of preparing the invoice.
  - 12.3.2 A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that BROKER can establish, to the satisfaction of CCSF, that BROKER would have made a

profit had all services and other work under this Contract been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

12.3.3 The reasonable cost to BROKER of handling material or equipment returned to the vendor, delivered to the CCSF or otherwise disposed of as directed by the CCSF.

12.3.4 A deduction for the cost of materials to be retained by BROKER, amounts realized from the sale of materials and not otherwise recovered by or credited to CCSF, and any other appropriate credits to CCSF against the cost of the services or other work.

12.4 In no event shall CCSF be liable for costs incurred by BROKER or any of its subcontractors after the termination date specified by CCSF, except for those costs specifically enumerated and described in the immediately preceding subsection 12.3. Such non-recoverable costs include, but are not limited to, anticipated profits on this Contract, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection 12.3.

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

12.6 CCSF's payment obligation under this Article shall survive termination of this Contract.

### **13. RIGHTS AND DUTIES UPON TERMINATION OR EXPIRATION**

13.1 This Article and the following Articles of this Contract shall survive termination or expiration of this Contract: 3.3, 3.5, 8.2, 9, 14, 15, 17, 20.1, 20.2, 20.3, 20.7, 20.9, 20.10, 20.13, 20.25, 20.26, 20.27, and 20.28.

13.2 Subject to the immediately preceding Article 13.1, upon termination of this Contract prior to expiration of the term specified in Article 1, this Contract shall terminate and be of no further force or effect. BROKER shall transfer title to CCSF, and deliver in the manner, at the times, and to the extent, if any, directed by CCSF, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Contract, and any completed or partially completed work which, if this Contract had been completed, would have been required to be furnished to CCSF. This article shall survive termination of this Contract.

### **14. ADMINISTRATIVE REMEDY FOR CONTRACT INTERPRETATION**

Should any question arise as to the meaning and intent of this Contract, the question shall, prior to any other action or resort to any other legal remedy, be referred to \_\_\_\_\_ (Purchasing) who shall decide the true meaning and intent of the Contract.

## **15. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES**

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the CCSF for three times the amount of damages which the CCSF sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the CCSF for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the CCSF for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the CCSF if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the CCSF a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the CCSF; (c) conspires to defraud the CCSF by getting a false claim allowed or paid by the CCSF; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the CCSF; or (e) is a beneficiary of an inadvertent submission of a false claim to the CCSF, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the CCSF within a reasonable time after discovery of the false claim.

## **16. MINORITY/WOMEN/LOCAL BUSINESS UTILIZATION; LIQUIDATED DAMAGES**

- 16.1 Compliance. BROKER understands and agrees to comply fully with all provisions of Chapter 12D.A ("Minority/Women/ Local Business Utilization Ordinance--IV") of the San Francisco Administrative Code and agrees to include this paragraph in all subcontracts made in fulfillment of the BROKER's obligations under this Contract. Said provisions are incorporated herein by reference and made a part of this Contract as though fully set forth. BROKER's willful failure to comply with Chapter 12D.A is a material breach of contract.
- 16.2 Enforcement. If BROKER willfully fails to comply with any of the provisions of Chapter 12D.A, the rules and regulations implementing Chapter 12D.A, or the provisions of this Contract pertaining to MBE or WBE participation, BROKER shall be liable for liquidated damages in an amount equal to BROKER's net profit on this Contract, or 10% of the total amount of this Contract, or \$1,000, whichever is greatest. The Director of the CCSF's Human Rights Commission (HRC) may also impose other sanctions against BROKER authorized in Chapter 12D.A, including declaring the BROKER to be irresponsible and ineligible to contract with the CCSF for a period of up to five years or revocation of the BROKER's MBE or WBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to §12D.A.16C.

By entering into this Contract, BROKER acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to CCSF upon demand. BROKER further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to BROKER on any contract with CCSF.

Contractor agrees to maintain records necessary for monitoring its compliance with Chapter 12D.A for a period of three years following termination of this contract.

**[If the contract will involve the use of subcontracts, include subparagraphs c., d. and e.:]**

- 16.3 Subcontracting Goals. The MBE/WBE subcontracting participation goal for this contract is **[fill in number]** %. BROKER shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to CCSF for payment shall include the information required in HRC Form 6. Failure to provide HRC Form 6 with each invoice submitted by BROKER shall entitle CCSF to withhold 20% of the amount of that invoice until HRC Form 6 is provided by BROKER.

BROKER shall not participate in any back contracting to the BROKER or lower-tier subcontractors, as defined in Chapter 12D.A, for any purpose inconsistent with the provisions of Chapter 12D.A, its implementing rules and regulations, or this Section.

- 16.4 Subcontract Language Requirement. BROKER shall include in all subcontracts with MBEs or WBEs made in fulfillment of BROKER's obligations under this Contract, a provision requiring BROKER to compensate any MBE or WBE subcontractor if BROKER does not fulfill its commitment to use the MBE or WBE subcontractor. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with Chapter 12D.A for a period of three years following termination of this contract.

- 16.5 Payment of Subcontractors. BROKER shall pay its subcontractors within three working days after receiving payment from the CCSF unless BROKER notifies the Director of HRC in writing within ten working days prior to receiving payment from the CCSF that there is a bona fide dispute between BROKER and its subcontractor and the Director waives the three-day payment requirement.

BROKER further agrees, within ten working days following receipt of payment from the CCSF, to file an affidavit with the Controller, under penalty of perjury, that the BROKER has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject BROKER to enforcement procedure under Administrative Code §12D.A.16.

## **17. NONDISCRIMINATION; PENALTIES**

- 17.1 BROKER Shall Not Discriminate. In the performance of this Contract, BROKER agrees not to discriminate against any employee, CCSF employee working with BROKER or subcontractor, applicant for employment with such contractor or subcontractor, or against

any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

- 17.2 Subcontracts. BROKER shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the S.F. Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. BROKER's failure to comply with the obligations in this subsection shall constitute a material breach of this Contract.
- 17.3 Nondiscrimination in Benefits. BROKER does not as of the date of this Contract and will not during the term of this Contract, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the CCSF elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the S.F. Administrative Code.
- 17.4 Condition to Contract. As a condition to this Contract, BROKER shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.
- 17.5 Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the S.F. Administrative Code are incorporated in this Section by reference and made a part of this Contract as though fully set forth herein. BROKER shall comply fully with and be bound by all of the provisions that apply to this Contract under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, BROKER understands that pursuant to §12B.2(h) of the S.F. Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Contract may be assessed against BROKER and/or deducted from any payments due BROKER.

## **18. REQUIRING MINIMUM COMPENSATION FOR COVERED EMPLOYEES**

BROKER agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Contract as though fully set forth. The text of the MCO is available on the web at [www.ci.sf.ca.us/MCO](http://www.ci.sf.ca.us/MCO). Capitalized terms used in this Section and not defined in this Contract shall have the meanings



assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, BROKER agrees to all of the following:

- 18.1 For each hour worked by a Covered Employee during a Pay Period on work funded under the Contract, BROKER shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, the BROKER shall pay \$10.00 an hour through December 31, 2002 and shall provide the 2.5% annual increase required by the MCO for each of the next three years.
- 18.2 BROKER shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CCSF with regard to BROKER's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.
- 18.3 BROKER understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by BROKER of the terms of this Contract. The CCSF, acting through the \_\_\_\_\_ Department, shall determine whether such a breach has occurred.
- 18.4 If, within 30 days after receiving written notice of a breach of this Contract for violating the MCO, BROKER fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, BROKER fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the CCSF, acting through the \_\_\_\_\_ Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:
  - 18.4.1 The right to charge BROKER an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
  - 18.4.2 The right to set off all or any portion of the amount described in Subsection 18.4.1 of this Article against amounts due to BROKER under this Contract;
  - 18.4.3 The right to terminate this Contract in whole or in part;
  - 18.4.4 In the event of a breach by BROKER of the covenant referred to in Subsection 18.2 of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
  - 18.4.5 The right to bar BROKER from entering into future contracts with the CCSF for three years.

Each of the rights provided in this Article 18.4 shall be exercisable individually or in combination with any other rights or remedies available to the CCSF. Any amounts realized by the CCSF pursuant to this article shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

- 18.5 BROKER represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.
- 18.6 BROKER shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the BROKER from the CCSF, which communications are marked to indicate that they are to be distributed to Covered Employees.
- 18.7 BROKER shall provide reports to the CCF in accordance with any reporting standards promulgated by the CCSF under the MCO, including reports on subcontractors.
- 18.8 BROKER shall provide the CCSF with access to pertinent records after receiving a written request from the CCSF to do so and being provided at least five (5) business days to respond.
- 18.9 The CCSF may conduct random audits of BROKER. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of BROKER every two years for the duration of this Contract. Nothing in this Contract is intended to preclude the CCSF from investigating any report of an alleged violation of the MCO..
- 18.10 Any subcontract entered into by BROKER shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Article. A subcontract means an agreement between the BROKER and a third party which requires the third party to perform all or a portion of the services covered by this Contract. BROKER shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is BROKER's obligation to ensure that any subcontractors of any tier under this Contract comply with the requirements of the MCO. If any subcontractor under this Contract fails to comply, CCSF may pursue any of the remedies set forth in this Article against BROKER
- 18.11 Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections 18.1 and 18.2 of this Article, and may pursue the following remedies in the event of a breach by BROKER of subsections 18.1 and 18.2, but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Broker understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by BROKER of subsections 18.1 or 18.2, the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the

Covered Employee is the prevailing party in any legal action or proceeding against BROKER arising from this Contract, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. BROKER also understands that the MCO provides that if BROKER prevails in any such action, BROKER may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

- 18.12 If BROKER is exempt from the MCO when this Contract is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but BROKER later enters into an agreement or agreements that cause BROKER to exceed that amount in a fiscal year, BROKER shall thereafter be required to comply with the MCO under this Contract. This obligation arises on the effective date of this Contract that causes the cumulative amount of agreements between the BROKER and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

## **19. REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES**

Unless exempt, BROKER agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Contract as though fully set forth. The text of the HCAO is available on the web at [www.ci.sf.ca.us/HCAO](http://www.ci.sf.ca.us/HCAO). Capitalized terms used in this Section and not defined in this Contract shall have the meanings assigned to such terms in Chapter 12Q.

- 19.1 For each Covered Employee, BROKER shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If BROKER chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission..
- 19.2 Notwithstanding the above, if BROKER is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part 19.1.
- 19.3 BROKER's failure to comply with the HCAO shall constitute a material breach of this Contract. CCSF shall notify BROKER if such a breach has occurred. If, within 30 days after receiving CCSF's written notice of a breach of this Contract for violating the HCAO, BROKER fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, BROKER fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, CCSF shall have the right to pursue the remedies set forth in 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to CCSF.
- 19.4 Any Subcontract entered into by BROKER shall require the subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Article. BROKER shall notify CCSF's Office of Contract Administration when it enters into such a subcontract and shall certify to the Office of

Contract Administration that it has notified the subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on subcontractor through the subcontract. BROKER shall be responsible for its subcontractors' compliance with this Chapter. If a subcontractor fails to comply, the CCSF may pursue the remedies set forth in this Article against BROKER based on the subcontractor's failure to comply, provided that CCSF has first provided BROKER with notice and an opportunity to obtain a cure of the violation.

- 19.5 BROKER shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying CCSF with regard to BROKER's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.
- 19.6 BROKER represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.
- 19.7 BROKER shall keep itself informed of the current requirements of the HCAO.
- 19.8 BROKER shall provide reports to the CCSF in accordance with any reporting standards promulgated by the CCSF under the HCAO, including reports on subcontractors and subtenants, as applicable.
- 19.9 BROKER shall provide CCSF with access to records pertaining to compliance with HCAO after receiving a written request from CCSF to do so and being provided at least five business days to respond.
- 19.10 CCSF may conduct random audits of BROKER to ascertain its compliance with HCAO. BROKER agrees to cooperate with CCSF when it conducts such audits.
- 19.11 If BROKER is exempt from the HCAO when this Contract is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but BROKER later enters into an agreement or agreements that cause BROKER's aggregate amount of all agreements with CCSF to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of this Contract that causes the cumulative amount of agreements between BROKER and the CCSF to be equal to or greater than \$75,000 in the fiscal year.

## 20. GENERAL PROVISIONS

- 20.1 Incidental and Consequential Damages. BROKER shall be responsible for incidental and consequential damages resulting in whole or in part from BROKER's acts or omissions. Nothing in this Contract shall constitute a waiver or limitation of any rights that CCSF may have under applicable law.
- 20.2 Liability of CCSF. The CCSF'S PAYMENT OBLIGATIONS UNDER THIS CONTRACT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN ARTICLE 5 OF THIS CONTRACT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, IN NO EVENT SHALL the CCSF 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 CONTRACT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS CONTRACT.

- 20.3 Contract Assignment. The services to be performed by BROKER are personal in character. This Contract shall be binding upon the successors and assigns of the parties hereto; provided that without the written consent of CCSF by written instrument executed and approved in the same manner as this Contract, BROKER may not assign this Contract, or any of its rights, interests or obligations under this Contract.
- 20.4 Governing Law. This Contract shall be construed and interpreted according to the laws of the State California applicable to contracts made and to be performed therein (but not rules governing conflicts of laws), and shall be fully performable and enforceable in San Francisco.
- 20.5 Compliance with Laws. BROKER agrees to keep itself fully informed of San Francisco's Charter, codes, ordinances and regulations of CCSF and of all state and federal laws in any manner affecting the performance of this Contract, and must at all time comply in all respects with all such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.
- 20.6 Modifications. This Contract 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 Contract. Contract shall cooperate with the Department to submit to the Director of HRC any amendment, modifications, supplement or change order that would result in a cumulative increase in the original amount of this Contract by more than 20%.
- 20.7 Independent Contractor Status. This Contract represents an agreement between an independent contractor and CCSF. BROKER and the agents and employees of BROKER shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by CCSF under this Contract. BROKER or any agent or employee of BROKER is liable for the acts and omissions of itself, its employees and its agents. Nothing in this Contract shall be construed as creating an employment or agency relationship between CCSF and BROKER or any agent or employee of BROKER.

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

- 20.7.1 Payment of Taxes and Other Expenses. Should CCSF, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that BROKER is an employee for purposes of collection of any employment taxes, the amounts payable under this Contract 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 BROKER which can be applied against this liability). CCSF shall then forward those amounts to the relevant taxing authority.

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

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Contract, BROKER shall not be considered an employee of CCSF. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that BROKER is an employee for any other purpose, then BROKER agrees to a reduction in CCSF's financial liability so that CCSF's total expenses under this Contract are not greater than they would have been had the court, arbitrator, or administrative authority determined that BROKER was not an employee.

- 20.8 Conflict of Interest Through its execution of this Contract, BROKER acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of CCSF's Charter and §87100 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.
- 20.9 Proprietary or Confidential Information of CCSF. BROKER understands and agrees that, in the performance of the work or services under this Contract or in contemplation thereof, BROKER may have access to private or confidential information which may be owned or controlled by CCSF and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to CcSF. BROKER agrees that all information disclosed by CCSF to BROKER shall be held in confidence and used only in performance of this Contract. BROKER shall exercise the same standard of care to protect such information as a reasonably prudent consultant would use to protect its own proprietary data.
- 20.10 Works for Hire. If, in connection with services performed under this Contract, BROKER or its subcontractors create manuals, forms, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the CCSF. If it is ever determined that any works created by BROKER or its subcontractors under this Contract are not works for hire under U.S. law, BROKER hereby assigns all copyrights to such works to the CCSF, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the CCSF, BROKER may retain and use copies of such works for reference and as documentation of its experience and capabilities.
- 20.11 Subcontracting. BROKER is prohibited from subcontracting this Contract or any part of it unless such subcontracting is first approved by CCSF in writing. Neither party shall, on the basis of this Contract, contract on behalf of or in the name of the other party. An contract made in violation of this provision shall confer no rights on any party and shall be null and void.

- 20.12 Waivers and Excuses. No right conferred on either party under this Contract shall be deemed waived and no breach of this Contract excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right or to have excused the other. Such a waiver or excuse, if granted by CCSF, must be signed by \_\_\_\_\_ of CCSF or authorized representative and if granted by BROKER, must be signed by the BROKER Program Manager or authorized representative, and if granted by BROKER, must be signed by the BROKER Program Manager. 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.
- 20.13 Taxes. Payment of any taxes, including California sales and use taxes, levied upon or as a result of this Contract, or the services delivered pursuant hereto, shall be the obligation of the BROKER.
- 20.14 Earned Income Credit (EIC) Forms. Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.
- 20.14.1 BROKER shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Contract becomes effective (unless BROKER has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by BROKER; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Contract.
- 20.14.2 Failure to comply with any requirement contained in subparagraph 16.15.1 of this Article shall constitute a material breach by BROKER of the terms of this Broker. If, within thirty days after BROKER receives written notice of such a breach, BROKER fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, BROKER fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the CCSF may pursue any rights or remedies available under this Contract or under applicable law.
- 20.14.3 Any subcontract entered into by BROKER shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.
- 20.14.4 Capitalized terms used in this Section and not defined in this Contract shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

- 20.15 MacBride Principles—Northern Ireland. Pursuant to S.F. Administrative Code §12.F.5, the CCSF urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The CCSF urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this Contract on behalf of BROKER acknowledges and agrees that he or she has read and understood this section.
- 20.16 Tropical Hardwood and Virgin Redwood Ban. Pursuant to S.F. Administrative Code §12I.5(b), the CCSF urges BROKER not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.
- 20.17 Drug-Free Workplace Policy. BROKER acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on CCSF property. BROKER agrees that any violation of this prohibition by BROKER, its employees, agents or assigns will be deemed a material breach of this Contract.
- 20.18 Resource Conservation. Chapter 21A of the S.F. Administrative Code (“Resource Conservation”) is incorporated herein by reference. Failure by BROKER to comply with any of the applicable requirements of Chapter 21A will be deemed a material breach of contract.
- 20.19 Compliance with Americans with Disabilities Act. BROKER acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. BROKER shall provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. BROKER agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Contract and further agrees that any violation of this prohibition on the part of BROKER, its employees, agents or assigns will constitute a material breach of this Contract.
- 20.20 Sunshine Ordinance. In accordance with S.F. Administrative Code §67.24(e), contracts, contractors’ bids, responses to solicitations and all other records of communications between CCSF and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.
- 20.21 Public Access to Meetings and Records. If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Contract, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further



agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Contract. The BROKER further acknowledges that such material breach of the Contract shall be grounds for the CCSF to terminate and/or not renew this Contract, partially or in its entirety.

- 20.22 Notification of Limitations on Contributions. This paragraph applies if this Contract is in excess of \$50,000 over a 12-month period or less and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal services and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved the Contract from receiving: (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the Contract. Public benefit recipients of the Contract are: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the Contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

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

- 20.23 Severance Clause. If any term or provision of this Contract is found to be illegal and therefore unenforceable, then if practicable and notwithstanding such provisions, the remainder of this Contract shall remain in full force and effect, and the offending term or provision shall be deemed struck and replaced with a term or provision that shall be reformulated to meet the original intent of the parties, but in a manner that is enforceable and legal.
- 20.24 Cooperation. In the event that CCSF elects to change agents, BROKER agrees to cooperate with the replacement agent. This would include, but is not limited to, a timely transfer of records, disengagement interviews, and briefings to be held with the incoming contractor. In the event of such change BROKER shall incur no further responsibility or

liability to provide Program Services to CCSF after the date of such change, under this Contract.

- 20.25 Contract Made in California; Venue The formation, interpretation and performance of this Contract shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Contract shall be in San Francisco.
- 20.26 Construction. All paragraph captions are for reference only and shall not be considered in construing this Contract.
- 20.27 Severability. Should the application of any provision of this contract to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Contract shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible, so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to makes such provision valid and enforceable.
- 20.28 Entire Agreement. The terms and conditions of this Contract shall constitute the entire agreement between the parties.

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

CCSF

CONTRACTOR

Recommended by:

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

\_\_\_\_\_  
Signature for Department

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title and Department

Approved as to Form:

Dennis J. Herrera  
City Attorney

\_\_\_\_\_  
Authorized Signature

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

\_\_\_\_\_  
Printed Name

Approved:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Judith A. Blackwell  
Director, Office of Contract Administration

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, ZIP

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Federal Employer ID Number

## Attachment A. Program Assumptions

BROKER Management Fee is based on providing services listed in Attachment B. Scope of Services for an OCIP with a scope that includes but does not exceed:

Term:	_____ months exclusive of the period of time necessary to closeout the program. Closeout shall mean the completion of all payroll and premium audits, and the closeout of all OCIP claims
Program Territory:	All projects included in the OCIP located in the State _____.
Project Count:	Forty-five
Project Value:	\$0 to \$0
Enrolled Contractor and/or Contract Count:	
Dedicated BROKER Resources: <ul style="list-style-type: none"> <li>• Program Manager</li> <li>• Software Data Management</li> <li>• Safety Services</li> <li>• Claims Services</li> </ul>	

# Attachment B.

## Scope of Services

### **1. Insurance Program Design and Marketing**

- Conduct a project risk assessment and identification of exposures to determine the need for special coverages.
- Design, market and implement the broadest insurance program at the most reasonable cost that adequately protects the Agency and all other parties against the risks arising out of the construction project.
- Represent the CCSF in all negotiations with insurers, underwriters, insurance regulatory authorities and all other parties with regard to the OCIP.
- Carefully check the wording and accuracy of each policy, binder, certificate, endorsement or other document received from insurers and obtain revisions in such documents when needed.
- Verify the accuracy of all rates and premiums charged.
- Promptly submit originals of all policies and endorsements to the CCSF.
- Be available to answer questions from the CCSF and the construction managers.
- Obtain answers from underwriters to policy-coverage questions.
- Attend meetings with CCSF and project personnel when requested.
- Prepare and issue insurance certificates and endorsements as requested by the CCSF.
- Assure that insurance policies are placed with reputable and financially responsible insurers.
- At least 60 days prior to the program anniversary, submit a written report stating:
  - Insured program earned premiums and insured and retained losses by coverage line
  - Expected renewal terms and conditions and other indications of market conditions, trends and changes
  - Identified problems in such areas as claims handling, safety hazards, uninsured risks, etc.
  - Recommendations for improved program design and coverage
  - Services performed, billed and planned
  - Accounting of all income received from the CCSF and/or the insurer on the OCIP, and the method by which fees and commissions are calculated

### **2. Risk Control Services**

- Continually monitor the Project's construction activities and loss exposures, evaluating risks to determine the needed level of risk retention and risk transfer, and recommend appropriate coverage changes or new coverages.
- Review and comment on insurer loss control activities and recommendations.
- Review legal contracts and advise the CCSF on risk transfer implications.

### **3. Contractor Bidding Services**

- Help the CCSF develop a contractors' bidding package with instructions that explain the

OCIP coverages and contractors' requirements.

- Thoroughly educate all contractors on all aspects of their participation in the OCIP.
- Participate with CCSF and construction management personnel in pre-bid meetings to explain the benefits and purpose of the OCIP to contractors.
- Analyze contractors' bids to determine whether they follow the bidding instructions and whether premium deductions for the OCIP coverages are reasonable.
- Analyze contractors' bids to help the CCSF qualify contractors on the basis of their safety practices and experience modifications.
- Prepare and distribute to all contractors and subcontractors an OCIP manual that provides information about the insurance program, claims reporting, statistical record keeping and safety procedures.

#### **4. Claims Management Services**

Design and management of overall claims management process

Assist in selection of third party claims administrator, if needed

Monitoring of claim service providers' performance

Development of reporting procedures by contractors

Monitor claims reporting procedures

Quarterly claim review meetings

Interaction with the carrier, CCSF and contractors regarding special claims investigations

Monitor carrier's loss information system

Claim review analysis and reserve analysis, including utilization of structured settlements

Assist the CCSF in the adjustment and settlement of claims arising from the OCIP.

Conduct periodic claims reviews to ensure efficient claims handling by the insurer.

- Maintain accurate claim data on an accident date basis and provide the State with detailed reports.
- Recommend deductible levels appropriate to contractors for each claim. Assist the CCSF in recovering deductible amounts from the respective contractors.
- Advise the CCSF on how coverage applies to specific claims.
- Arrange and negotiate fees for medical services near the project site for parties injured from the OCIP activities and utilize other cost containment procedures.
- Benchmark the OCIP claims against other large construction projects, similar OCIPs and industry averages, using OSHA data and the project's loss frequency and severity rates.
- Analyze and develop the OCIP losses to their ultimate level to determine potential dividends from the OCIP insurance program.

## **5. OCIP Administration Services**

- Track all insurance-related documents and retain organized, easily transferable records of all aspects of the OCIP program.
- Monitor the accuracy of contractor payroll reports and the workers' compensation premium calculations by the insurer.
- Secure and maintain up-to-date evidence of automobile liability and other required non-OCIP insurance coverages from all contractors.
- Coordinate the timely filing of required workers' compensation statistical reports.
- Verify the insurer's dividend calculations under any loss-sensitive insured plan.
- Make progress reports on the insurance program to the CCSF when requested.
- Prepare and present an annual written report for the CCSF on the progress of the OCIP until the time when the OCIP is closed.
- Execute a written broker-services contract with the CCSF that defines the scope of services and performance standards.

## **6. Loss Control and Safety Services**

- Assist the CCSF in developing a construction loss control program that includes:
  - An inspection program
  - A safety training program
  - A safety manual
  - First aid and injury programs
- Assist the CCSF in engaging an experienced OCIP safety manager, as needed, to implement a coordinated loss control program.
- Interact frequently with the safety manager on issues of contractor safety compliance.
- Advise the CCSF on how it can best use the loss control resources of its OCIP insurer.
- Assist the CCSF in developing procedures for keeping detailed safety records.
- Assist the safety manager in analyzing the frequency, severity and causes of losses incurred on the OCIP.
- Assist the safety manager in developing crisis management and disaster control plans.

- Assist the safety manager in developing a construction safety incentive program for contractors.

## **7. Risk Management Information System Services**

- Determine the risk management information systems (RMIS) needs of the OCIP.
- Implement a risk management information system that accurately interfaces with the systems of the OCIP insurers, especially with regard to claims.
- Promptly and accurately input the OCIP payroll, exposure, safety and contractor data into the RMIS.
- Prepare RMIS reports on a regular basis that keep the CCSF informed on the progress of the OCIP.
- Maintain contractor tracking logs that include:
  - An alphabetical listing of all contractors, including name, address and telephone numbers
  - Lists of all contractors by tiers of relationships
  - Contract award dates, start-up dates and completion dates
  - Policy type, number, term, limits, insurer and coverage
  - Underwriting data by experience modification, estimated contract and payroll data, labor classifications, rates and lower tier contractor cost
- A policy and form information tracking system to track receipt and transmittal of the policy forms of all contractors and insurance companies.
- Monthly payroll reporting.
- Exception reporting to identify contractors not in compliance with RMIS requirements.
- Financial information, including development/trending of losses, reserve analysis, retrospective rating/dividend analysis, records of transactions and other information as appropriate.
- Confirm that the RIMS can accurately import the OCIP insurer's claims and policy data.
- Confirm that the RMIS data belongs to the Agency in case there are future changes in systems or vendors.

## **8. OCIP Close-Out Services**

- Recommend to the CCSF on when and how the OCIP should be terminated and the



program revert to the traditional insurance provided by contractors.

- Provide for and monitor the late reporting of claims arising from the OCIP
- Recommend to the CCSF whether it should negotiate a lump sum buy-out of outstanding claims with its OCIP insurer.
- Recommend to the CCSF on how it should make the transition to its regular risk management program, paying special attention to design errors, construction defects and pollution exposures.