

**City and County of San Francisco**  
**Request for Proposals for**  
**San Francisco Recreation and Parks**  
**Playable Cities (RFP-REC-STIR-20-001)**



Date issued:  
Proposal due:

1/03/2020  
2/07/2020 2:00 p.m. (PST)

Request for Proposals for  
**San Francisco Recreation and Parks**  
**Playable Cities**

TABLE OF CONTENTS

	<u>Page</u>
<b>I.</b> Introduction and Schedule .....	1
<b>II.</b> Scope of Work .....	6
<b>III.</b> Submission Requirements .....	7
<b>IV.</b> Evaluation and Selection Criteria .....	8
<b>V.</b> Question and Answer Period, and Contract award .....	9
<b>VI.</b> Terms and Conditions for Receipt of Proposals .....	11
<b>VII.</b> Contract Requirements .....	15
<b>VIII.</b> Protest Procedures .....	16

**Appendices:**

[Appendix A] STIR Non-Disclosure Agreement  
    Agreement terms: Insurance Coverage  
    Agreement terms: Data and Privacy Requirements

[Appendix B] is there to alert the potential proposers to the many requirements they must meet in order to become compliant City vendors during the STIR residency period

[Appendix C] Standard Contract

**Request for Proposals for  
San Francisco Recreation and Parks  
Playable Cities**

**1. Introduction and Schedule**

**A. General**

The San Francisco Recreation and Park Department (RPD) is seeking a technology startup who will participate as its partner in the Startup in Residence (STIR) Program, which is managed by the Department of Technology's Office of Civic Innovation.

The purpose of the Startup in Residence Program ("STIR" or "Program") is to introduce City agencies, departments, commissions and boards ("Departments") to new innovation and technologies. The Department determines the nature of the collaboration with the startup that is selected including, but not limited to, the number of meetings, expectations, appropriate deliverables and minimum viable product. These expectations will be discussed together and documented at the start of the 16-week program with assistance from the STIR program manager. The Department is soliciting proposals from start-ups for technology based solutions to address a specific civic challenge. "Technology based solutions" means on-premise or cloud-based software (licenses to software object code), mobile applications, hosted software or applications, information technology hardware, and/or any combination thereof. The Department challenge is described in greater detail in Section B below.

Selected entrepreneurs participate in the STIR Program on a volunteer, unpaid basis. The use of department staff time and resources is at the sole discretion of the participating department in accordance with department policies and the laws of the City. At the end of their residency, the Startup creates a pitch presentation and participates in an optional Demo Day with the City of San Francisco.

The scope of work, a narrative description of the activities and deliverables to be accomplished during the 16 week project period, will be created in collaboration between each government partner and participating startup for each individual challenge project. The participating startup is expected to visit the location of the government partner to complete the scope of work in person. The scope of work meeting will be in March 2020.

The program offers participating startups the opportunity to enter into a contract with City following the residency. All contracting decisions are ultimately up to the discretion of the government partners. The project period will commence in February 2020 for a period of 16 weeks. During this project period, the participating startup will conduct user research to understand the challenge, design a solution, build or customize the solution, and test the solution in collaboration with their government partner. The project period for the will take place between February 2020 and May 2020.

The contracting decision will depend on how well an applicant's solution performs in addressing the government's challenge. Contracting decisions will be made in May 2020 Upon the conclusion of the residence period and the creation of a minimum viable product as defined by both parties, the City will have the option to license any technology-based solution developed during the residence period as follows:

**RFP for San Francisco Recreation and Parks  
Playable Cities**

- **Perpetual License to on Premise Software:** In those cases where the participant develops on premise software, the City will have the option to license the software in perpetuity free of charge. If the option is exercised, the participant(s) will maintain the software and provide the City with free maintenance for six (6) months, during which time the City and participant(s) will negotiate an annual maintenance fee for future years.
- **Hosted Software or Applications:** In those cases where the software developed is hosted by a participant (i.e., “hosted software”), the City will have the option of a term license with the first six (6) months of access provided free of charge. If the option is exercised, the City and participant(s) will negotiate an annual subscription fee for future years.
- **Hardware:** In those cases where the participant develops a hardware product, the City will have the option to lease or license the product for free for one year (including free maintenance). If the option is exercised, the City may elect to purchase or continue leasing the product following the initial year of free use, and in such a scenario will negotiate a compensation charge and maintenance with the participant(s).

Selected participants will be required to sign a Non-Disclosure and Technology Based Solution Agreement (see sample provided in **Appendix A**) prior to commencing work with the assigned City department. The perpetual license, hosting, and/or purchase option agreement(s) will be entered into following the residence period if a successful technology based solution has been developed by participant(s).

In those cases where the participant (“Contractor”) develops a hosted software solution, special legal requirements would apply to the license, hosting, and/or purchase option agreement. Technology-based solutions must be in compliance with the City’s ITD technical architecture and environment. City’s data, and the Contractor’s data center storing such data, must be located and remain within the United States. The Contractor shall ensure that all physical or electronic transmission or exchange of data with the City and/or any other parties expressly designated by the City shall take place via secure means (for electronic transmissions using HTTPS or SFTP or the most recent version used in the industry). The Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the City contract. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor. The Contractor shall ensure that no City data of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties.

The contract shall have an original term of 3 years. Should the contract be extended, the annual compensation will increase at a rate similar to the per year costs of the original term. Proposers may submit proposals with greater or lesser value, and cost and reasonableness of rates will be considered as part of the evaluation.

→ *Before submitting a Proposal, we encourage Applicants to review information regarding the STIR program at [www.startupinresidence.org](http://www.startupinresidence.org).*

## B. Challenge Overview

### Project Summary:

RPD envisions a more livable city for all, where San Francisco's parks connect us to play, nature and each other. As the steward of one of the premier urban park systems in America, RPD would like to utilize technology in San Francisco parks. RPD is seeking creative technology solutions that will promote play in the city, resulting in opportunities for meaningful moments with each other and the environment.

### Challenge Details:

#### **Challenge Goal**

The San Francisco Recreation and Parks Department (SFRPD) is seeking an interactive and easy-to-use solution to increase play and connection for our City residents by 2020. As the steward of one of the premier urban park systems in America, SFRPD would like to utilize technology in San Francisco parks.

#### **Background**

The San Francisco Recreation and Parks Department (SFRPD) envisions a more livable city for all, where San Francisco's parks connect us to play, nature and each other. SFRPD is seeking creative technology solutions that will promote play in the city, resulting in opportunities for meaningful moments with each other and the environment.

Currently, SFRPD has several smart solutions e.g. occupancy sensing for individual sites; however, none have been focused on promoting playful strategies.

Smart technologies have typically not been applied to parks systems, so this opportunity is a greenfield. The impact from this challenge will be far reaching as it will provide a roadmap for the program in the department, and potentially other park systems.

#### **Requirements and Outcomes**

SFRPD is open to any solutions that would increase play and connection in San Francisco. Ideas include but are not limited to:

- Ability for interactive communication between park users and park features (e.g. buildings, water fountains, trees, windmills, playgrounds), so that residents may understand the history of these sites, as well as communicate with each other about these sites.
- Gamification applied to the parks, which could support strategies to enhance healthy and lawful park behavior, increase engagement and education in our natural areas, and promote play
- Digital interactive play features to be incorporated into the physical space of playgrounds and play spaces
- Storydriven application that provides a narrative experience that would connect dispersed points of interest in the parks

**RFP for San Francisco Recreation and Parks  
Playable Cities**

Technological Standards

- City's Surveillance Ordinance must be supported
- Must apply to all ages, not specific to youth
- RecPark owns all data generated by the solution; raw data must be provided

**C. Schedule**

The anticipated schedule for selecting a consultant is:

<u>Proposal Phase</u>	<u>Date</u>
RFP is issued by the City	January 03 2020
Deadline for submission of written questions or requests for clarification	January 23 2020
Proposals due	February 7 2020
Oral interview with firms selected for further consideration	February 2020

**D. Contractors Unable to do Business with the City**

**1. Generally**

Contractors that do not comply with laws set forth in San Francisco's Municipal Codes may be unable to enter into a contract with the City. Some of the laws are included in this RFP, or in the sample terms and conditions attached.

**2. Companies Headquartered in Certain States**

This Contract is subject to the requirements of Administrative Code Chapter 12X, which prohibits the City from entering into contracts with companies headquartered in states with laws that perpetuate discrimination against LGBT populations or where any or all of the work on the contract will be performed in any of those states. Proposers are hereby advised that Proposers which have their United States headquarters in a state on the Covered State List, as that term is defined in Administrative Code Section 12X.3, or where any or all of the work on the contract will be performed in a state on the Covered State List may not enter into contracts with the City. A list of states on the Covered State List is available at the website of the City Administrator.

## **II. Scope of Work**

The STIR Program is a 16 week, pro bono mostly remote collaboration period between the Selected Applicant and the City. Each Challenge has a dedicated project manager from within the applicable department.

The first phase of the Selected Applicant's participation in the STIR Program will consist of developing a "Scope of Work" with the Department. The Scope of Work describes the activities and deliverables to be accomplished during the Program Period. The Selected Applicant and the City will work together, with STIR Program staff, to draft the Scope of Work, but the City will specify the nature and means of the collaboration, such as the number of in-person meetings with the Selected Applicant.

The objective of the Scope of Work is to outline the requirements and general functional areas believed to be necessary to successfully perform this contract. The Scope of Work is to be used as a general guide and is not intended to be a complete list of all requirements or qualifications. Proposing teams may suggest a modified scope as part of their proposal.

### **III. Submission Requirements**

#### **A. Time and Place for Submission of Proposals**

Proposals must be received by 2:00 P.M. (PST) on February 7 2020. Proposals must be submitted electronically using the STIR application submission webpage: [www.cityinnovate.com/challenge](http://www.cityinnovate.com/challenge)

Paper submissions will not be accepted.

### **IV. Part Four - Submission Requirements**

#### **A. Submission of Proposals**

Proposals must be received by 2:00 P.M. (PST) on February 7 2020. Late submissions will not be considered.

#### **B. Format and Content**

Proposals must be submitted electronically using the STIR application submission webpage: [www.cityinnovate.com/challenge](http://www.cityinnovate.com/challenge). Paper submissions will not be accepted. Firms interested in responding to this RFP must submit the following information, in the order specified below:

Required proposal content is outlined the STIR application submission webpage, under the following headings:

- Challenge you are addressing
- Introduction to your team
- Introduction to the product/solution

Applicants must accurately describe their experience and credentials in the applications. Applicants who are selected for interviews may be asked to describe their skills and experience in greater details. Inaccurate or false information shall be grounds for rejection of your applications.

**IV. Evaluation and Selection Criteria**

**A. Minimum Qualifications**

The Office of Civic Innovation (OCI) will perform an initial screening of all applications to determine whether they satisfy these minimum qualifying criteria. Any application that does not meet these requirements by the deadline for submittal of proposals will be considered non-responsive and will not be eligible for selection.

An application will be deemed non-responsive if the following requirements are not met:

1. All sections of the application form must be filled out.
2. The application must specifically address/respond to one of the identified “challenge areas”.
3. The applicant must commit to participating in the program for the full 16 week pro bono residence period. At least one team member must be able to meet in-person with City department staff in February 2020 for the Scope of Work meeting.

Proposals should clearly demonstrate that the qualifications are met. Insufficient or incomplete information may result in a proposal being considered non-responsive and may not be eligible for award of the contract. If required information is complete, but the department determines that the proposer does not meet minimum qualifications, proposer may be deemed non-responsive.

**B. Selection Criteria**

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

**1. Overall Evaluation Process**

For each challenge area, the proposals will be evaluated by a selection committee comprised of employees of the relevant City department in question with expertise in the challenge area and/or IT systems of the department, as well as relevant experts the Department chooses to be on the committee. Selection committees may include the IT manager for that department. The City intends to evaluate the proposals generally in accordance with the criteria itemized below.

Criteria	Possible Points
<p>Proposed technology based solution.</p> <ul style="list-style-type: none"> <li>• Demonstrates a comprehensive understanding of the nature and scope of the challenge</li> <li>• Extent to which the solution creatively and effectively addresses the challenge area</li> <li>• Whether the solution is compatible with or flexible enough to work with the City’s IT infrastructure or City requirements</li> <li>• Demonstrated ability and commitment to provide the resources and staff time to actively participate in and work with the City department during the 16-week program, including by attending in-person meetings, trainings and</li> </ul>	<p>50</p>

**RFP for San Francisco Recreation and Parks  
Playable Cities**

workshops.	
Relevant technology skill set and experience. <ul style="list-style-type: none"> <li>• Expertise of the start-up in the fields necessary to execute the proposal</li> <li>• Recent relevant experience of team members</li> <li>• Professional qualifications and education of team members</li> <li>• The start-up's record of past successes developing technology tools and services for the public or private sector</li> <li>• The existence (or lack thereof) of working prototypes</li> </ul>	35
The proposed solution's larger potential in the public sector. <ul style="list-style-type: none"> <li>• The proposal's potential to have broader application and benefit for other governmental entities</li> </ul>	15
<b>TOTAL POINTS FOR WRITTEN PROPOSAL</b>	<b>100</b>

Following the evaluation of the written proposals, up to three (3) proposers receiving the highest scores for a particular Civic Challenge Area will be invited to an oral interview. The interview will consist of standard questions asked of each of the three proposers. City departments will combine both written and oral interview scores of the three "short listed" proposers to determine final scores and participant selection. Evaluation and scoring criteria for the oral interview are noted below.

Oral Interview Criteria	Possible Points
Communication skills. <ul style="list-style-type: none"> <li>• Ability to verbalize key concepts and solution ideas in a manner that is easy for department representatives to understand.</li> </ul>	25
Critical problem solving skills. <ul style="list-style-type: none"> <li>• Ability to respond to departmental questions about the applicant's proposed solution with detailed answers that demonstrate an awareness of possible challenges that may be encountered during the residence period.</li> </ul>	25
<b>TOTAL POINTS FOR ORAL INTERVIEW</b>	<b>50</b>

**V. Question and Answer Period, and Contract award**

**A. Question and Answer Period**

Proposers shall submit all questions concerning this Request for Proposal in writing by email only during the Question and Answer Period, ending January 23 2020, no later than 11:59 p.m. PST and directed to: jane.lim@sfgov.org. Questions and Answers will be posted publically. All questions concerning the RFP or process shall be submitted no later than 11:59 p.m. PST on January 23 2020.

Please reference RFP No. **RFP-REC-STIR-20-001**

It is the responsibility of the Proposer to check for any RFP Addendums, Q&A postings, and other updates which will be posted on the Office of Civic Innovation's website:  
<https://www.innovation.sfgov.org/stir-rfp>

**B. Contract Award**

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

## **VI. Terms and Conditions for Receipt of Proposals**

### **A. Errors and Omissions in RFP**

Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify the Department, in writing, if the proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to the Department promptly after discovery, but in no event later than 72 hours prior to the date that proposals are due. Modifications and clarifications will be made by addenda as provided below.

### **B. Inquiries Regarding RFP**

Proposers shall submit all questions concerning this Contract Proposal, scope of services or requirements in writing by email only during the Question and Answer Period, ending January 23 2020 no later than 11:59 p.m. PST and directed to: jane.lim@sfgov.org. All Proposer questions concerning the bid process shall be submitted no later than 11:59 p.m. PST on January 23 2020. Proposers who fail to do so will waive all further rights to protest, based on these specifications and conditions.

### **C. Objections to RFP Terms**

Should a proposer object on any ground to any provision or legal requirement set forth in this RFP, the proposer must, not less than 72 hours prior to the RFP deadline, provide written notice to the Department 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.

### **D. Change Notices**

The Department may modify the RFP, prior to the proposal due date, by issuing an Addendum to the RFP, which will be posted on the website. The proposer shall be responsible for ensuring that its proposal reflects any and all Bid Addendum(s) issued by the Department 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 Bid Addendum(s). It is the responsibility of the proposer to check for any Addendum, Questions and Answers, and updates, which will be posted on the Office of Civic Innovation's website:  
<https://www.innovation.sfgov.org/stir-rfp>

### **E. Term of Proposal**

Submission of a proposal signifies that the proposed services and prices are valid for 180 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity. At Proposer's election, the proposal may remain valid beyond the 180 day period in the circumstance of extended negotiations.

### **F. Revision of Proposal**

A proposer may revise a proposal on the proposer's own initiative at any time before the deadline for submission of proposals. The proposer must submit the revised proposal in the same manner as the original. A revised proposal must be received on or before, 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 Department may require a proposer to provide oral or written clarification of its proposal. The Department reserves the right to make an award without further clarifications of proposals received.

**G. Errors and Omissions in Proposal**

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

**H. Financial Responsibility**

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

**I. Proposer's Obligations under the Campaign Reform Ordinance**

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

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

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

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

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

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

1. Criminal. Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
2. Civil. Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.

3. Administrative. Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

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

**J. Sunshine Ordinance**

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

**K. Public Access to Meetings and Records**

If a proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the proposer must comply with Chapter 12L. The proposer must include in its proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to proposer's meetings and records, and (2) a summary of all complaints concerning the proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in proposer's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

**L. Reservations of Rights by the City**

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

1. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all proposals;
3. Reissue a Request for Proposals;
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 RFP, or the requirements for contents or format of the proposals;
5. Procure any materials, equipment or services specified in this RFP by any other means; or
6. Determine that no project will be pursued.

**M. No Waiver**

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

**N. Local Business Enterprise Goals and Outreach**

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

**O. Cooperative Purchasing**

The Director of Purchasing may allow other public agencies or non-profits made up of multiple public agencies to utilize the resulting contract to obtain some or all of the commodities or services to be provided by Proposer under the same terms and conditions of any contract awarded pursuant to this RFP. Pursuant to Section 21.16 of the San Francisco Administrative Code, other City Departments may also utilize the results of this competitive solicitation.

Each solicitation process requires a **new submittal of CMD Attachment 2 forms** at the following link, located under the heading "Attachment 2: Requirements for Architecture, Engineering, & Professional Services Contracts":

<http://www.sfgsa.org/index.aspx?page=6135>

- (1) Form 2A-CMD Contract Participation Form
- (2) Form 2B- CMD "Good Faith Outreach" Requirements Form
- (3) Form 3- CMD Non-Discrimination Affidavit
- (4) Form 4- CMD Joint Venture Form (if applicable), and
- (5) Form 5- CMD Employment Form

**RFP for San Francisco Recreation and Parks  
Playable Cities**

Please submit Forms 2A, 2B, 3 and 5 (and Form 4 if Joint Venture response) with your Response Package. The forms should be part of the "Original" of your response. The forms should have original signatures.

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

## **VII. Contract Requirements**

### **A. Standard Contract Provisions**

The successful proposer may be required to enter into a contract substantially in the form of the Licensing and Technology Based Solution Agreement, attached hereto as **Appendix C**. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsement, 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 firm and may proceed against the original selectee for damages.

### **B. Nondiscrimination in Contracts and Benefits**

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

### **C. Minimum Compensation Ordinance (MCO)**

The successful proposer will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements. For the amount of hourly gross compensation currently required under the MCO, see [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract.

Additional information regarding the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco).

### **D. Health Care Accountability Ordinance (HCAO)**

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

### **E. First Source Hiring Program (FSHP)**

If the contract is for more than \$50,000, then the First Source Hiring Program (Admin. Code Chapter 83) may apply. Generally, this ordinance requires contractors to notify the First

Source Hiring Program of available entry-level jobs and provide the Workforce Development System with the first opportunity to refer qualified individuals for employment.

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at <http://oewd.org/first-source> and from the First Source Hiring Administrator, (415) 701-4848.

#### **F. Conflicts of Interest**

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

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

### **VIII. Protest Procedures**

#### **A. Protest of Non-Responsiveness Determination**

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

#### **B. Protest of Non-Responsible Determination**

Within five working days of the City's issuance of a notice of a determination of non-responsibility, a vendor that would otherwise be the lowest responsive proposer may submit a written notice of protest. The vendor will be notified of any evidence reflecting upon their responsibility received from others or adduced as a result of independent investigation. The vendor will be afforded an opportunity to rebut such adverse evidence, and will be permitted to present evidence that they are qualified to perform the contract. Such notice of protest must be received by the City on or before the fifth working day following the City's issuance of the notice of non-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 protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

#### **C. Protest of Contract Award**

Within five working days of the City's issuance of a notice of intent to award the contract, any firm that has submitted a responsive proposal and believes that the City has incorrectly

**RFP for San Francisco Recreation and Parks  
Playable Cities**

selected another proposer for award may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day after the City's issuance of the notice of intent to award.

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

**D. Delivery of Protests**

All protests must be received by the due date. If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the City received the protest. Protests or notice of protests made orally (e.g., by telephone) will not be considered. Protests must be delivered to:

**Recreation and Park Department  
Attn: Sean McFadden  
McLaren Lodge  
501 Stanyan Street  
San Francisco, Ca 94941**

[sean.mcfadden@sfgov.org](mailto:sean.mcfadden@sfgov.org)

APPENDIX A: NON-DISCLOSURE AND TECHNOLOGY BASED SOLUTION  
AGREEMENT

**San Francisco Recreation and Park Department**

Confidential Information Nondisclosure  
and Technology Based Solution Agreement

This Non-disclosure and Technology Based Solution Agreement (the “Agreement” or “NDA”) is made as of [date] (the “Effective Date”) by and between [name of Contractor] (“Contractor” or “Recipient”), and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City” or “Recreation and Park Department (RPD), (“Government Partner”). “Party” or “Parties” shall mean the entities signing this Agreement.

WHEREAS, the RPD’s (“Government Partner”)’s Start-up in Residence (“STIR”) Program aims to connect Government agencies with innovative technology start-ups to develop technology based solutions to address challenges facing government; and

WHEREAS, a Request for Proposal (“RFP”) was initiated on January 3, 2019, and Government Partner selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, Contractor requires the Government Partner’s Confidential Information (as defined below) to develop a technology based solution to the RPD identified challenge and the Government Partner is willing to provide said Confidential Information for such purpose.

NOW therefore, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration the sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Technology Based Solution Scope of Work; Staffing.**

(a) Technology Based Solution Scope of Work. Contractor agrees to partner with Government Partner, free of charge, in developing technology based solutions to the RPD’s identified challenge described in full detail in Appendix A “Scope of Work.” “Technology Based Solutions” means solutions offered to Government Partner such as on premise software (licenses to software object code), mobile applications, hosted software or applications, information technology hardware, and/or any combination thereof. In those cases where Contractor develops a hosted software solution, the Government Partner’s data, and the Contractor’s data center storing such data, must be located and remain within the United States.

(b) Staffing. Work under this Agreement shall be performed only by competent personnel appropriately trained in technical skills to perform their duties under the supervision of, and in the employment of, Contractor. Contractor will comply with Government Partner's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Government Partner's request, must be supervised by Contractor. The personnel of each Party, when on the premises of the other, shall comply with the security and other personnel regulations of the Party on whose premises such individual is located.

**2. Term and Termination**

(a) Term. The term of this NDA shall be from [date] to [date]. This NDA shall apply to all Confidential Information relating to the development of a technology based solution in regards to RPD's identified challenge, which is listed in Section 3 and designated as "Confidential Information" by Government Partner. The duty to keep designated information confidential shall continue beyond the term of this NDA. At the completion of the term of this NDA, except as otherwise provided in this NDA, Contractor shall return to Government Partner all tangible Confidential Information within ten (10) business days. Contractor shall purge any digitally held Confidential Information within ten (10) business of the completion of this NDA and provide Government Partner with written certification within five (5) days that such purge occurred.

(b) Termination for Convenience. Government Partner shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Government Partner shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective. Upon termination for convenience, Contractor shall return to Government Partner all tangible Confidential Information within ten (10) business days. Contractor shall purge any digitally held Confidential Information within ten (10) business of the completion of this NDA and provide Government Partner with written certification within five (5) days that such purge occurred.

(c) This Section 2 and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

- |   |                                     |
|---|-------------------------------------|
| 3. Proprietary and Confidential Information;<br>Protection of Private Information | 14. Amendment and Waiver            |
| 4. Ownership of Developed Technology<br>Solutions; Government Partner Options     | 15. Entire Agreement                |
| 5. Warranties of Contractor   | 16. Audit and Inspection of Records |
| 6. Indemnification and General Liability  | 17. Taxes                           |
| 8. Insurance  | 23. Non-Waiver of Rights            |
| 13. Governing Law; Jurisdiction   |                                     |

3. Proprietary or Confidential Information; Protection of Private Information.

(a) Proprietary or Confidential Information of Government Partner. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information that may be owned or controlled by Government Partner and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Government Partner. Contractor agrees that all information disclosed by Government Partner to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

(b) Exceptions. Notwithstanding the above, Contractor shall not have liability to the Government Partner with regard to any Confidential Information that: (a) at the time of disclosure, is available to the general public; (b) at a later date, becomes available to the general public through no fault of Contractor, and then only after such later date; (c) was in

Contractor's possession prior to receipt without an obligation of confidence; (d) is disclosed to Contractor without restriction on disclosure by a third party who had the lawful right to disclose such information; (e) was independently developed by Contractor without the use of any Confidential Information; or (f) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided, however, that Contractor shall provide notice to the Government Partner of such court order, requirement or request to enable Government Partner to seek a protective order or otherwise prevent or restrict such disclosure.

(c) Data Transmission. The Contractor shall ensure that all electronic transmission or exchange of Confidential Information between the Parties shall take place via secure means (using HTTPS or SFTP or equivalent). The Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor. The Contractor shall ensure that no Government Partner Confidential Information of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by Government Partner. Government Partner's data, and the Contractor's data center storing such data, must be located and remain within the United States.

(d) Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant of license thereto. Government Partner will retain all right, title, and interest in and to all Confidential Information.

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

#### 4. Ownership of Developed Technology Solutions; Government Partner Options.

(a) Ownership of Developed Technology Solutions. Contractor represents and warrants to Government Partner that it is the lawful owner or licensee, or will become the lawful owner or licensee, of all programs, materials and property used by it in the performance of the services contemplated hereunder and shall have the right to permit Government Partner access to the developed on premise software, hosted software or applications, or developed equipment as described below.

#### 5. Warranties of Contractor.

(a) Warranty of Title and Infringement Indemnification. Contractor warrants that the Technology Based Solutions developed pursuant to this Agreement will, prior to its licensing or transfer to Government Partner, be the sole and exclusive property

of Contractor. If notified promptly in writing of any judicial action brought against Government Partner based on an allegation that Government Partner's use of the Technology Based Solutions infringes a patent or copyright, or any rights of a third party, or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (infringement), Contractor will hold Government Partner harmless and defend such action at its expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against Government Partner based on an allegation that Government Partner's use of the Technology Based Solutions constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement. In the event that a final injunction shall be obtained against Government Partner's use of the Technology Based Solutions by reason of Infringement, or in Contractor's opinion Government Partner's use of the Technology Based Solutions is likely to become the subject of Infringement, Contractor may at its option and expense (a) procure for Government Partner the right to continue to use the Technology Based Solutions as contemplated hereunder, (b) replace the Technology Based Solutions with non-infringing, functionally equivalent substitute Technology Based Solutions, or (c) suitably modify the Technology Based Solutions to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Technology Based Solutions. If none of these options is reasonably available to Contractor, then this Agreement may be terminated at the option of either Party hereto and Contractor shall refund to Government Partner all amounts paid for the use of the infringing Technology Based Solutions.

- (b) Disabling Code. Contractor represents and warrants that any developed software, traditional object code license, applications or software as a service, equipment or combination thereof, and any information, reports or other materials provided to Government Partner, including future enhancements and modifications thereto, shall be free of any disabling code or viruses at the time of their receipt by Government Partner.

**6. Indemnification and General Liability**. Contractor shall indemnify and save harmless Government Partner and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to

property, arising directly or indirectly from Contractor's performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of active negligence or willful misconduct of Government Partner and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Government Partner's costs of investigating any claims against the Government Partner. In addition to Contractor's obligation to indemnify Government Partner, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Government Partner 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 Government Partner and continues at all times thereafter.

7. Incidental and Consequential Damages. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver of limitation of any rights that Government Partner may have under applicable law.

8. Insurance.

(a) Required Coverages. Without in any way limiting Contractor's liability pursuant to Section 6 "Indemnification and General Liability" of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

2) Commercial General Liability Insurance with limits not less than \$200,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

4) Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees

5) During the initial phase of this project (16-week residency period) the City will consider lower coverage limits for the forms of insurance listed above.

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

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

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

(c) All policies shall be endorsed to provide thirty (30) days' advance written notice to the Government Partner of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the Government Partner address set forth in Section 18, entitled "Notices to the Parties."

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

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

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

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

(h) 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 [Government partner name], its officers, agents and employees and the Contractor as additional insureds.

**9. Responsibility for Equipment.** Government Partner shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by Government Partner. The acceptance or use of such equipment by Contractor or any of its employees means that Contractor accepts full responsibility for and

agrees to exonerate, indemnify, defend and save harmless Government Partner from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to Contractor, its employees, Government Partner employees or third parties, or to property belonging to any of the above.

**10. Independent Contractors.** The Parties are independent contractors and will so represent themselves in all regards. Neither Party is the agent of the other, and neither may make commitments on the other's behalf.

**11. Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the Parties agree to renegotiate such provision in good faith. In the event that the Parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement; (b) the balance of the Agreement shall be interpreted as if such provision were so excluded; and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

**12. Remedies.** It is understood and agreed that money damages would not be a sufficient remedy for any breach or threatened breach of this Agreement and the Government Partner shall be entitled to seek injunctive relief (preliminary or otherwise) as a remedy for any such breach or threatened breach without the necessity of proving actual damages. Such remedy shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or equity including investigators' and attorneys' fees and costs.

**13. Governing Law; Jurisdiction.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California. Each of the Parties hereto consents to the exclusive jurisdiction and venue of the courts in the [Government partner name], California.

**14. Amendment and Waiver.** Any term of this Agreement may be amended with the written consent of Contractor and the Government Partner. Any amendment or waiver effected in accordance with this Section shall be binding upon the Parties and their respective successors and assigns. Failure to enforce any provision of this Agreement by a Party shall not constitute a waiver of any term hereof by such Party.

**15. Entire Agreement.** This Nondisclosure Agreement embodies the entire understanding between the Parties respecting the subject matter of this Agreement and supersedes any and all prior negotiations, correspondence, understandings and agreements between the Parties respecting the use and disclosure of Confidential Information. The headings are provided for the purpose of reference and convenience and are not intend to affect the meaning of the contents or scope of this Agreement.

**16. Audit and Inspection of Records.** Contractor agrees to maintain and make available to the Government Partner, during regular business hours, accurate books and accounting records relating to its work under this Agreement.

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

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

To Government Partner: [name and title of department contact person]  
[name of department]  
[mailing address]  
[e-mail address; fax number is optional]

To Contractor: [company name]  
[mailing address]  
[e-mail address; fax number is optional]

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

19. Limitations on Contributions. By executing this Agreement, Contractor acknowledges that it is familiar with [insert code] of the Government Partner's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the Government Partner for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a Government Partner elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 of the City's Campaign and Governmental Conduct Code and provide the names of the persons required to be informed to Government Partner.

20. 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 the City if it becomes aware of any such fact during the term of this Agreement

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

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

**23. 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.

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

**25. Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions.

**26. Compliance with Americans with Disabilities Act.** Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement. Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. Sec. 1201 et seq.) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d).

**27. Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 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 laws. Contracts, contractors' bids, responses to requests for proposals and all other records of communications between Government Partner 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.

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

IN WITNESS WHEREOF, the Parties have executed this Non-disclosure and Technology Based Solution Agreement as of the date first above written.

**Startup Partner**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

*Print*

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

Address:

**Recreation and Park Department**

Signature: \_\_\_\_\_

Name: \_\_

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

**Recreation and Park Department**

**Christine Nath**

**McLaren Lodge**

**501 Stanyan Street**

**San Francisco, CA 94941**

APPROVED AS TO FORM:

City and County of San Francisco, Government  
Partner Attorney

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

Deputy City Attorney

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

## Appendix B Standard Forms

### A. How to become Eligible to Do Business with the City:

Before the City can award any award any contract to a contractor, all vendors must meet the minimum requirements described below and become a Supplier. There may be additional requirements placed upon a vendor depending on the type of good or service to be purchased.

### B. Mandatory Forms:

At a minimum, in order to become eligible to do business with the City, a vendor must submit the following documents via the City's supplier portal located at <https://sfcitypartner.sfgov.org/> :

1. [Vendor Application Packet](#) (includes *New Vendor Number Request Form* and *IRS Form W-9*)
2. [CCSF Vendor - Business Registration \(Electronic Submission - you must have a vendor number to complete\)](#)
3. [CMD 12B-101 Declaration](#) of Nondiscrimination in Contracts and Benefits

### C. Vendor Eligibility and Invoice Payment:

Vendors must have a City-issued vendor number, have all compliance paperwork submitted and approved by the City, and have an executed contract or purchase order before payments can be made. Once a vendor number has been assigned, an email notification will be provided by the City's Vendor File Support Division. This notification will include instructions on how to sign up to receive payments through the City's supplier portal located at <https://sfcitypartner.sfgov.org/> .

### D. Vendor Eligibility Forms:

<u>Form</u>	<u>Purpose/Info</u>	<u>Routing</u>
<a href="#">CCSF Vendor - Business Registration (Electronic Submission - you must have a vendor number to complete)</a>	This declaration is required for city vendors to determine if you are required to obtain a Business Registration Certificate.	<a href="https://sfcitypartner.sfgov.org/">https://sfcitypartner.sfgov.org/</a>
<a href="#">Declaration of Nondiscrimination in Contracts and Benefits with supporting documentation</a> (Form	This Declaration is used by the City's Contract Monitoring Division to determine if a vendor offers benefits to employees. When a vendor offers benefits, it must be	<a href="https://sfcitypartner.sfgov.org/">https://sfcitypartner.sfgov.org/</a>

CMD-12B-101)	verified that all benefits, including insurance plans and leaves, are offered equally to employees with spouses and employees with domestic partners. For more information and assistance, please visit the City Administrator's <b>Contract Monitoring Division Equal Benefits</b> web page.	
<a href="#">Vendor Profile Application</a>	Includes New Vendor Number Request Form and IRS Form W-9.	<a href="https://sfcitypartner.sfgov.org/">https://sfcitypartner.sfgov.org/</a>

**E. Supplemental Forms:**

<b>Form:</b>	<b>Required If:</b>
Minimum Compensation Ordinance (MCO) Declaration (  pdf)	You have at least \$25,000 (\$50,000 for non-profit organizations) in cumulative annual business with a City department or departments and have more than 5 employees, including employees of any parent, subsidiaries and subcontractors.
Health Care Accountability Ordinance (HCAO) Declaration (  pdf)	You have at least \$25,000 (\$50,000 for non-profit organizations) in cumulative annual business with a City department or departments and have more than 20 employees (more than 50 employees for nonprofit organizations), including employees of any parent, subsidiaries or subcontractors.
Insurance Requirements ( <a href="#">pdf</a> )	The solicitation requires the successful proposer to demonstrate proof of insurance.
Payment (Labor and Material) Bond ( <a href="#">pdf</a> )	The solicitation requires the awarded vendor to post a Payment (Labor and Material) bond.
Performance Bond ( <a href="#">pdf</a> )	The solicitation requires the awarded vendor to post a Performance bond.
Local Business Enterprise Program Application ( <a href="#">Contract Monitoring Division</a> )	You desire to participate in the City's Local Business Enterprise Program which helps certain financially disadvantaged businesses increase their ability to compete effectively for City contracts

For further guidance, refer to the City's supplier training videos that are located online at: <https://sfcitypartner.sfgov.org/> .

## APPENDIX C

### LICENSING AND TECHNOLOGY BASED SOLUTION AGREEMENT

#### City and County of San Francisco Startup In Residence Program

This Licensing and Technology Based Solution Agreement (the “Agreement”) is made as of [date] (the “Effective Date”) by and between [name of Contractor] (“Contractor” or “Recipient”), and the City and County of San Francisco, a municipal corporation, (“City”). “Party” or “Parties” shall mean the entities signing this Agreement.

WHEREAS, the City and County of San Francisco (“City”)’s Startup in Residence (“STIR”) Program aims to connect City agencies with innovative technology start-ups to develop technology based solutions to address challenges facing City government; and

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

WHEREAS, Contractor requires the City’s Confidential Information (as defined below) to develop a technology based solution to the [name of department] identified challenge and the City is willing to provide said Confidential Information for such purpose.

NOW therefore, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration the sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### **1. Technology Based Solution Scope of Work; Staffing**

(a) **Technology Based Solution Scope of Work.** Contractor agrees to partner with City, in developing technology based solutions to the [name of department]’s identified challenge described in full detail in **Appendix A “Scope of Work.”** “Technology Based Solutions” means solutions offered to City such as on premise software (licenses to software object code), mobile applications, hosted software or applications, information technology hardware, and/or any combination thereof. In those cases where Contractor develops a hosted software solution, the City’s data, and the Contractor’s data center storing such data, must be located and remain within the United States. Contractor will describe the proposed solution in full detail in **Appendix A “Scope of Work.”**

(b) **Staffing.** Work under this Agreement shall be performed only by competent personnel appropriately trained in technical skills to perform their duties under the supervision of, and in the employment of, Contractor. Contractor will comply with City’s reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City’s request, must be supervised by Contractor. The personnel of each Party, when on the premises of the other, shall comply with the security and other personnel regulations of the Party on whose premises such individual is located.

#### **2. Term and Termination**

(a) **Term.** The term of this agreement shall be for a term of 18 months. The term of this Agreement shall commence on the later of: (i) [insert Contractor’s start date]; or (ii) the Effective Date and expire on [insert expiration date], unless earlier terminated as otherwise provided herein.

(b) Termination for Convenience. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective. Upon termination for convenience, Contractor shall return to City all tangible Confidential Information within ten (10) business days. Contractor shall purge any digitally held Confidential Information within ten (10) business of the completion of this agreement and provide City with written certification within five (5) days that such purge occurred.

(c) This Section 2 and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

Financial Matters	Amendment and Waiver
Ownership of Developed Technology Solutions	Entire Agreement
Warranties of Contractor	Audit and Inspection of Records
Indemnification and General Liability	Ownership of Results
Infringement Indemnity	Taxes
Insurance	Non-Waiver of Rights
Governing Law; Jurisdiction	Compliance with Laws

### 3. Financial Matters

(a) Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

(b) Guaranteed Maximum Costs. The 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 the 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 25, "Modification of this Agreement."

(c) Compensation. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the [insert title of department head], in his or her sole discretion, concludes has been satisfactorily performed.

Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies and no “.00”]. The breakdown of charges associated with this Agreement appears in Appendix B, “Calculation of Charges,” attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to both Parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

(d) Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until [insert name of department] approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

(e) Withhold Payments. If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due 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.

(f) Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City as specified in Appendix B or in such alternate manner as the Parties have mutually agreed upon in writing.

(g) Getting paid for goods and/or services from the City.

(1) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).

(2) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

#### **4. Proprietary or Confidential Information; Protection of Private Information.**

(a) Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

(b) Definition of Confidential Information. Confidential Information means the non-public information that is exchanged between the parties, provided that such information is: (i) identified as confidential at the time of disclosure by the disclosing party (“Discloser”), or (ii) disclosed under

circumstances that would indicate to a reasonable person that the information should be treated as confidential by the party receiving such information (“Recipient”). Confidential information includes, but is not limited to, technical, business, financial, customer, design, pricing, research, know-how, product development, and third party confidential plans and information, as well as source and object code.

(c) Exceptions. Notwithstanding the above, Contractor shall not have liability to the City with regard to any Confidential Information that: (a) at the time of disclosure, is available to the general public; (b) at a later date, becomes available to the general public through no fault of Contractor, and then only after such later date; (c) was in Contractor’s possession prior to receipt without an obligation of confidence; (d) is disclosed to Contractor without restriction on disclosure by a third party who had the lawful right to disclose such information; (e) was independently developed by Contractor without the use of any Confidential Information; or (f) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided, however, that Contractor shall provide notice to the City of such court order, requirement or request to enable City to seek a protective order or otherwise prevent or restrict such disclosure.

(d) Data Transmission. The Contractor shall ensure that all electronic transmission or exchange of Confidential Information between the Parties shall take place via secure means (using HTTPS or SFTP or equivalent). The Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor. The Contractor shall ensure that no City Confidential Information of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by City. City’s data, and the Contractor’s data center storing such data, must be located and remain within the United States.

(e) Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant of license thereto. City will retain all right, title, and interest in and to all Confidential Information.

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

**5. Ownership of Developed Technology Solutions.** Contractor represents and warrants to City that it is the lawful owner or licensee, or will become the lawful owner or licensee, of all programs, materials and property used by it in the performance of the services contemplated hereunder and shall have the right to permit City access to the developed on premise software, hosted software or applications, or developed equipment as described below.

**6. Warranties of Contractor.**

(a) Warranty of Title and Infringement Indemnification. Contractor warrants that the Technology Based Solutions developed pursuant to this Agreement will, prior to its licensing or transfer to City, be the sole and exclusive property of Contractor. If notified promptly in writing of any judicial action brought against City based on an allegation that City’s use of the Technology Based Solutions infringes a patent or copyright, or any rights of a third party, or constitutes misuse or misappropriation of

a trade secret or any other right in intellectual property (infringement), Contractor will hold City harmless and defend such action at its expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the Technology Based Solutions constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement. In the event that a final injunction shall be obtained against City's use of the Technology Based Solutions by reason of Infringement, or in Contractor's opinion City's use of the Technology Based Solutions is likely to become the subject of Infringement, Contractor may at its option and expense (a) procure for City the right to continue to use the Technology Based Solutions as contemplated hereunder, (b) replace the Technology Based Solutions with non-infringing, functionally equivalent substitute Technology Based Solutions, or (c) suitably modify the Technology Based Solutions to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Technology Based Solutions. If none of these options is reasonably available to Contractor, then this Agreement may be terminated at the option of either Party hereto and Contractor shall refund to City all amounts paid for the use of the infringing Technology Based Solutions.

(b) Disabling Code. Contractor represents and warrants that any developed software, traditional object code license, applications or software as a service, equipment or combination thereof, and any information, reports or other materials provided to City, including future enhancements and modifications thereto, shall be free of any disabling code or viruses at the time of their receipt by City.

**7. Indemnification and General Liability**. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

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

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

**9. Bankruptcy.** In the event that either Party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other Party this Agreement shall terminate and be of no further force and effect. Upon termination of this Agreement pursuant to this Section, Contractor shall within forty-eight (48) hours return City's Data in an agreed-upon machine readable format. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within thirty (30) calendar days purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five (5) calendar days that such purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

**10. Transition Services and Disposition of Content.** Contractor shall within five (5) calendar days of the expiration or termination of the Services return City's data in an agreed-upon machine readable format. This provision shall also apply to all City Data that is in the possession of subcontractors, agents or auditors of Contractor. Such data transfer shall be done at no cost to the City. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within thirty (30) calendar days purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five (5) calendar days that such purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

Contractor shall provide to City and/or Successor Service Provider assistance requested by City to effect the orderly transition of the Services, in whole or in part, to City or to Successor Service Provider. During the transition period, City Data access shall continue to be made available to City without alteration. Such Transition Services shall be provided on a time and materials basis if the City opts to return to its own servers or City chooses a Successor Service Provider. Transition costs may include: (a) developing a plan for the orderly transition of the terminated Services from

Contractor to Successor Service Provider; (b) if required, transferring the City Data to Successor Service Provider; (c) using commercially reasonable efforts to assist City in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Contractor in connection with the Services; (d) using commercially reasonable efforts to make available to City, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Contractor in connection with the Services; and, (e) such other activities upon which the Parties may agree. Notwithstanding the foregoing, should City terminate this Agreement due to Contractor's material breach, City may elect to use the Services for a period of no greater than six (6) months from the date of termination at a reduced rate of twenty (20%) percent off of the then-current Services Fees for the terminated Services. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section shall survive the termination of this Agreement.

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.

Any notice of default must be sent by registered mail to the address set forth in Section 22, "Notices to the Parties."

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

**12. Insurance.**

(a) Required Coverages. Without in any way limiting Contractor's liability pursuant to Section 6 "Indemnification and General Liability" of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

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

3) 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.

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

(i) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or

personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form;

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

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

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

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

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

(c) All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 18, entitled "Notices to the Parties."

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

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

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

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

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

13. **Responsibility for Equipment.** City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees means that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to Contractor, its employees, City employees or third parties, or to property belonging to any of the above.

14. **Independent Contractors.** The Parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other and neither may make commitments on the other's behalf.

15. **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the Parties agree to renegotiate such provision in good faith. In the event that the Parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement; (b) the balance of the Agreement shall be interpreted as if such provision were so excluded; and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

16. **Remedies.** It is understood and agreed that money damages would not be a sufficient remedy for any breach or threatened breach of this Agreement and the City shall be entitled to seek injunctive relief (preliminary or otherwise) as a remedy for any such breach or threatened breach without the necessity of proving actual damages. Such remedy shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or equity including investigators' and attorneys' fees and costs.

17. **Governing Law; Jurisdiction.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California. Each of the Parties hereto consents to the exclusive jurisdiction and venue of the courts in the City and County of San Francisco, California.

18. **Amendment and Waiver.** Any term of this Agreement may be amended with the written consent of Contractor and the City. Any amendment or waiver effected in accordance with this Section shall be binding upon the Parties and their respective successors and assigns. Failure to enforce any provision of this Agreement by a Party shall not constitute a waiver of any term hereof by such Party.

19. **Entire Agreement.** This Agreement embodies the entire understanding between the Parties respecting the subject matter of this Agreement and supersedes any and all prior negotiations, correspondence, understandings and agreements between the Parties respecting the use and disclosure of Confidential Information. The headings are provided for the purpose of reference and convenience and are not intend to affect the meaning of the contents or scope of this Agreement.

20. **Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement.

21. **Taxes.** Payment of any taxes, including possessory interest taxes, and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor.

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

To City: [name and title of department contact person]  
[name of department]  
[mailing address]  
[e-mail address; fax number is optional]

To Contractor: [name of contractor]  
[mailing address]  
[e-mail address; fax number is optional]

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

**23. Data Breach; Loss of City Data.** In the event of any Data Breach, act, error, omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of City Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of City Data, Contractor shall, as applicable:

(a) Notify City immediately following discovery, but no later than twenty-four (24) hours, of becoming aware of such occurrence or suspected occurrence. Contractor's report shall identify:

- (i) the nature of the unauthorized access, use or disclosure;
- (ii) the Confidential Information accessed, used or disclosed;
- (iii) the person(s) who accessed, used and disclosed and/or received protected information (if known);
- (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure, and
- (v) what corrective action Contractor has taken or will take to prevent future unauthorized access, use or disclosure.

(b) In the event of a suspected Breach, Contractor shall keep the City informed regularly of the progress of its investigation until the uncertainty is resolved;

(c) Contractor shall coordinate with the City in its breach response activities including without limitation:

- (i) Immediately preserve any potential forensic evidence relating to the breach, and remedy the breach as quickly as circumstances permit;
- (ii) Promptly (within 2 business days) designate a contact person to whom the City will direct inquiries, and who will communicate Contractor responses to City inquiries;
- (iii) As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore City service(s) as directed by the City, and undertake appropriate response activities;

(iv) Provide status reports to the City on Breach response activities, either on a daily basis or a frequency approved by the City;

(v) Make all reasonable efforts to assist and cooperate with the City in its Breach response efforts;

(vi) Ensure that knowledgeable Contractor staff are available on short notice, if needed, to participate in City-initiated meetings and/or conference calls regarding the Breach; and

(vii) Cooperate with City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by City.

(d) In the case of personally identifiable information (PII) or protected health information (PHI), at City's sole election, (a) notify the affected individuals as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (b) reimburse City for any costs in notifying the affected individuals;

(e) In the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no fewer than eighteen (18) months following the date of notification to such individuals;

(f) Perform or take any other actions required to comply with applicable law as a result of the occurrence;

(g) Without limiting Contractor's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless City for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from City in connection with the occurrence;

(h) Recreate lost City Data in the manner and on the schedule set by City without charge to City; and

(i) Provide to City a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence.

(j) Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain (at the City's election) information that may include: name and contact information of Contractor's (or City's) representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor.

(k) Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

(l) City shall conduct all media communications, unless at its sole discretion directs Contractor to do so, related to such Data Breach.

**24. Use of City Data.** Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, including user tracking and exception City Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor or third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

**25. Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 22, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement.

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

**27. 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 the City if it becomes aware of any such fact during the term of this Agreement.

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

**29. Assignment.** The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor

unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

**30. 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.

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

**32. Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

**33. Compliance with Americans with Disabilities Act.** Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement. Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. Sec. 1201 et seq.) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d).

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

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

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

**CITY**

**CONTRACTOR**

Recommended by:

[Contractor Name]

\_\_\_\_\_  
Department Head

\_\_\_\_\_  
Name  
Address

City vendor number: \_\_\_\_\_

Approved as to Form:

Dennis J. Herrera  
City Attorney

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

Approved:

\_\_\_\_\_  
Alaric Degrafinried  
Acting Director of the Office of Contract  
Administration, and Purchaser

**Appendices**

- A: Statement of Work
- B: Calculation of Costs