

## The City and County of San Francisco Flow Down Provisions

### **1. Publications and Work Product**

If, in connection with this Subcontract or the implementation of the Work Program, Subcontractor creates artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship or Publications, such creations shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such creations shall be the property of the City and County of San Francisco (City). If it is ever determined that any such creations are not works for hire under applicable law, Subcontractor hereby assigns all copyrights thereto to City, and agrees to provide any material, execute such documents and take such other actions as may be necessary or desirable to effect such assignment. With the prior written approval of Enterprise and the City, Subcontractor may retain and use copies of such creations for reference and as documentation of its experience and capabilities. Subcontractor shall submit all releases, assignments or other agreements to Enterprise to ensure that City obtains the rights set forth herein.

City has the right to monitor from time to time the administration by Subcontractor of any programs or other work, including, without limitation, educational programs or trainings, to ensure that Subcontractor is performing such element of the Work Program, or causing such element of the Work Program to be performed, consistent with the terms and conditions of this Subcontract.

### **2. Acquisition and Disposition of Nonexpendable Property**

Any interest of Subcontractor, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, the contents of computer files or media, or other documents or Publications prepared by Subcontractor in connection with this Subcontract, the implementation of the Work Program, the services to be performed under this Subcontract, or acquired through the use of any Grant Agreement, and upon an Event of Default, shall become the property of and be promptly transmitted by Subcontractor to Enterprise. Upon the written request of Enterprise, Subcontractor shall transmit or deliver to Enterprise any Work Product at the end of the term or upon earlier expiration of this Subcontract.

### **3. Insurance**

Subcontractor shall maintain in force, during the full term of this Subcontract, insurance in the amounts and coverages as listed on Item 9 of the Standard Terms and Conditions. In addition to those requirements listed, Subcontractor shall name the City and County of San Francisco, its officers, agents, and employees and Enterprise as additional insureds.

### **4. Nondiscrimination and Equal Benefits**

Subcontractor shall comply with the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code. Subcontractor's failure to comply with any of the obligations in this subsection shall constitute a material breach of this Subcontract.

## **5. Requiring Minimum Compensation for Employees**

A. Subcontractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P. 5.1 of Chapter 12 are incorporated herein by reference and made a part of this Subcontract as though fully set forth. The text of the MCO is available on the web at <http://www.sfgov.org/olse/mco>. A partial listing of some of Subcontractor's obligations under the MCO is set forth in this Section. Subcontractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

B. The MCO requires Subcontractor to pay Subcontractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Subcontractor is obligated to keep informed of the then-current requirements.

C. Subcontractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

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

E. The City and Enterprise are authorized to inspect Subcontractor's job sites and conduct interviews with employees and conduct audits of Subcontractor.

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

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

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

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

#### **6. First Source Hiring Program [Section 18.09] and LBE Ordinance**

Subcontractor does not plan to hire any contractors. If Subcontractor does desire to hire a contractor, Subcontractor must comply with the requirements of Chapter 83 of the San Francisco Administrative Code.

#### **7. Consideration of Criminal History in Hiring and Employment Decisions**

(a) Subcontractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Subcontract as though fully set forth herein. The text of the Chapter 12T is available on the web at [www.sfgov.org/olse/fco](http://www.sfgov.org/olse/fco). A partial listing of some of Subcontractor’s obligations under Chapter 12T is set forth in this Section. Subcontractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Subcontract shall have the meanings assigned to such terms in Chapter 12T (and all references to “Contractor” shall mean Subcontractor).

(b) The requirements of Chapter 12T shall only apply to Contractor’s operations to the extent those operations are in furtherance of the performance of this Subcontract, shall apply only to applicants and employees who would be or are performing work in furtherance of this Subcontract, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

(c) Not used

(d) Contractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile

justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(e) Contractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 16.16(d), above. Contractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(f) Contractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Subcontract, that the Contractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(g) Contractor shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor control at which work is being done or will be done in furtherance of the performance of this Subcontract. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

(h) Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Subcontract.

## **8. State Labor Standards**

Subcontractor shall ensure that the requirement of Chapter I (commencing with Section 1720) of Part 7 of the California Labor Code (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met. Subsection (a) of Labor Code section 1771.1 states that "a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered subcontractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the subcontractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded." Subsection (b) of Labor Code section 1771.1 states that "notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5."

## **9. Grievance Procedures**

Subcontractor has the right to submit a complaint regarding the activities funded by this Subcontract and request a written copy of Enterprise's grievance procedures upon request.

## **10. Supervision of Minors**

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

## **11. San Francisco Bottle Water Ordinance**

Subcontractor agrees to comply with all applicable provisions of Environment Code Chapter 24 (the "Bottled Water Ordinance"). Accordingly, the sale or distribution of drinking water in plastic bottles of twenty-one (21) fluid ounces or less is prohibited at any gathering of more than 100 attendees that is funded in whole or part under this Subcontract. If Subcontractor does not believe that the hydration needs of attendees can be satisfied through existing onsite potable water connections, then Subcontractor may request a waiver of the Bottled Water Ordinance. In addition to any remedies set forth in this Subcontract, the Director of the City's Department of the Environment may impose administrative fines as set forth in San Francisco Environment Code Chapter 24 for any violation of the Bottled Water Ordinance.

## **12. Food Service Waste Reduction Requirements**

Subcontractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Subcontract as though fully set forth. This provision is a material term of this Subcontract. By entering into this Subcontract, Subcontractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Subcontractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Subcontract was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Subcontractor's failure to comply with this provision.

## **13. Local Business Enterprise Utilization**

Subcontractor does not plan to hire any contractors. If Subcontractor does desire to hire a contractor, Subcontractor shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code

**14. Sugar-Sweetened Beverage Prohibition**

Grantee agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

**15. Public Access to Nonprofit Records and Meetings**

If Subcontractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Subcontractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.