

**Alpha Plan-GS \$Mart (Tax Exempt),
For the City and County of San Francisco,
Terms and Conditions (Version 1.5)
Dated June 4, 2003**

The following terms and conditions are applicable to the City and County of San Francisco (the "City") acting by and through the State of California's Alpha Plan offered in GS \$Mart.

PURPOSE OF AGREEMENT

The purpose of this plan is to prescribe the financing provisions, covenants, and payment schedules for installment purchases to be made by any of the City's Departments for specific "Assets" which may include, but are not limited to, goods and/or services, equipment and software. The City does not have any obligation to pay for any portion of the Assets before acceptance by the City. In addition, the City will not pay for any interest charges on the Assets until those Assets are accepted by the City. The term "Contract" refers to this agreement issued by the City to the Lender for the financing of the Assets, whether incorporated by reference or in full, the Certification Form, the applicable payment schedule, and any other applicable documents. The term "Lender," as used in this financing plan, refers to the supplier of the financing. The term "Supplier" refers to the entity providing the Assets purchased by this Contract. The term "Payment Schedule" refers to the Payment Schedule provided by the prospective Lender incorporated into and made a part of this Contract to show the installment payments, with principal and interest broken out, due under this Contract.

PLAN PROVISIONS

I. Appropriation of Funds

This Contract was issued by the City under and pursuant to the laws of the City and the State of California to fund the acquisition of the Assets described herein. If, after the first fiscal year (July 1 through June 30) in which Assets are procured, funds are not appropriated or otherwise made available to continue paying for the Assets in a subsequent fiscal year, then the City may terminate this Contract as of the last day for which funds were appropriated or otherwise made available, but shall be obligated to pay all charges incurred through the end of that fiscal year. The City incurs no obligation under this Contract for any period of time for which funds are not appropriated.

It is reasonably expected that installment payments under this Contract will be paid from annual appropriations of the City. The remaining general funds of the City are not reasonably expected to be used to make such payments and no other moneys are pledged to the Contract or reasonably expected to be used to pay principal and interest on the Contract.

In the event of non-appropriation, within 30 days following the delivery to the City of a written request by the Lender, the City shall provide Lender a written certificate to the effect that no funds have been appropriated or otherwise made available for payments due under this Contract. The City will make a reasonable effort as soon as practicable to notify the Lender of a non-appropriation.

I.A Guaranteed Maximum Costs

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

B. Except as may be provided by laws governing emergency procedures, officers and employees of City are not authorized to request, and City is not required to reimburse Lender for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

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

D. The Controller can not authorize payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

I.B Submitting False Claims; Monetary Penalties

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

II. Best Efforts for Funding and Replacement Upon Termination Due to Nonappropriation

The City will use its best efforts to obtain funding for the Assets purchased hereunder.

III. Opinion of Counsel Contract Validity

The City agrees to provide Lender, at time of funding or assignment an Opinion of Counsel certifying the following:

1. The City is a municipal corporation and a chartered city and county of the State of California (the "State").
2. The Contract has been duly authorized, executed and delivered by the City and, constitutes a legal, valid and binding agreement of the City enforceable in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally. The City expresses no opinion as to the availability of equitable remedies or the enforceability of the indemnification provisions therein. In addition, the City advises that a California court may not strictly enforce certain covenants if it concludes that such enforcement would be unreasonable under the then existing circumstances.

IV. No Prepayment Penalty and No Termination for Convenience

A. The City may elect to prepay any portion of the remaining unpaid balance at any time during the Contract. No penalties will be assessed against the City for such prepayments (such as, but not limited to, interest and service charges). Interest on any remaining balances for the remaining term will be at the same interest rate quoted for this Contract. If the City elects to prepay the remaining principal balance (in part or in whole) due the Lender, the prepayment amount will be calculated as the amount equal to the current balance plus the amount of accrued interest based on the number of days since the last payment was due. The Lender will be provided a written notice from the City 45 days prior to the prepayment date.

B. Notwithstanding any other provision of this Contract, there shall be no termination for convenience of the payments due pursuant to the Payment Schedule until such time the full amount due is paid. If acceptance does not occur as indicated in the Certification Form, the City retains the right to terminate the Contract in advance of any payments due and without penalty.

V. Title and Public Purpose of Assets

Pursuant to this Contract, the City is entitled to receive said Assets in consideration for the obligation of the City under this Contract. Said Assets will be used in the furtherance of the public purposes of the City. Notwithstanding any other provision of this Contract, except as provided in the Contract for proprietary license agreements, title to the Assets shall pass to the City upon acceptance by the City of the Assets. In the event of non-appropriation per Section I, title shall immediately revert to the Lender.

VI. Maintenance

Any Assets financed under this Contract shall be eligible for maintenance by the Supplier, or his agent, upon installation and acceptance by the City. The City shall maintain in full force and effect during the term of this Contract maintenance provisions, which may include a full maintenance service plan, time and materials plan or other maintenance plans, for the Assets still unpaid. The City shall, at its expense, take all other actions to maintain the Assets in good working order, condition, and repair.

VII. Financing Assignment

A. Assignment of this Contract by the Lender to a subsequent Assignee, Paying Agent or Trustee is subject to the prior written approval of the City. Such approval shall not be unreasonably withheld. The City and Lender mutually agree that any assignment is for financing purposes only and shall not relieve the Supplier from performance obligations under this Contract.

Lender and its assigns, if any, agree that at no time shall the City be required to provide any disclosure information, including, without limitation, any undertaking pursuant to Securities and Exchange Commission (S.E.C.) Rule 15(c) 2-12 as a result of any assignment hereunder. However, the Lender, or its assigns, is encouraged to contact the City directly if questions or issues arise.

The City also acknowledges that Lender may establish an acquisition fund in connection with the Assets purchased in order to ensure the availability of funds for the acquisition.

B. The City does not intend to sell said Assets or said Contract or otherwise dispose of said Assets during the term of the Contract. Subject to Section VII A. herein, the Lender may sell the Contract and the Lender or its assigns, if any, will pay the Supplier for the Assets upon closing. If assignment occurs at closing, all of the proceeds received from such sale will be used immediately to pay the Supplier of the Assets in full or to pay costs related to the Contract or to reimburse the Supplier for such expenditures.

C. To secure the payment of the amounts shown on the Payment Schedule, Lender reserves a purchase money security interest in procured Assets and City hereby grants a security interest in any substitutions and replacements of the Assets and additions thereto (provided that the additions cannot be removed in such a manner as to leave the Assets in its original condition) and the proceeds thereof. A copy of the Contract may be filed with appropriate authorities at any time after signature by the City as a financing statement in order to perfect Lender's security interest.

The City also shall execute from time to time, alone or with Lender, any reasonable financing statements or other reasonable documents considered by Lender to be necessary or desirable to perfect or protect the security interest hereby created. The Assets shall remain personal property, not become part of the freehold and be kept at the location stipulated in the Contract as the installation site. Upon payment of the full amount owed pursuant to the Payment Schedule, or upon partial payment under Section XII (Destruction of Assets) the Lender shall immediately release the security interest in the Assets, or portion of Assets for which payment was completed, and, if requested by the City prior to five (5) years from the date of filing, file documentation to effect the release, such as a UCC-3, or any other required document.

VIII. Rights of Assignee

Subject to Section VII A. herein, the City shall agree in writing that the Assignee shall have all rights that the Lender assigns to the Assignee under the financing plan, including but not limited to the right to issue or receive all notices and reports, to give all consents, to receive title to the Assets, to declare a default and to exercise all remedies thereunder and City agrees not to assert against Assignee any defense, claim, counterclaim, or set-off on account of breach of warranty, breach of service agreement, or otherwise and will settle all warranty, mechanical, service or other claims with respect to the Assets directly with the Supplier and Assignee shall not be liable for such service or other claims. If requested by the Lender, the City shall pay Assignee all payments as provided in the Contract Payment Schedule, except as provided hereunder for non-appropriation or claim against the Lender, without deduction or set-off on account of any claim the City may have against the Supplier or relative to the Assets.

IX. Tax Covenants and Securities Issues

A. The City certifies by executing this Contract that the proceeds of such obligations will be used to acquire the Assets, and will not be used to acquire securities having a higher yield than such obligations or to otherwise exploit the difference in yield between tax exempt and taxable securities, and that, based upon the reasonable expectations of the City as of the date of issuance of such obligations, it complies with Department of Treasury regulations.

B. The City has not received notice that its tax certification may not be relied upon with respect to its own issues nor has it been advised that any adverse action by the federal government is contemplated.

C. Neither the City nor the Lender will make or direct any use of the proceeds of the obligation provided herein or any other funds of the City to acquire any securities or obligation, and neither the City nor the Lender shall take or permit to be taken any other action or actions, which will cause the obligation provided herein to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code") or to be "federally guaranteed" within the meaning of Section 149(b) of the Code, and neither the City nor the Lender will use or permit the use of such proceeds or funds, or any of the Goods or Services procured by any person, which will cause the obligations provided herein to be a "private activity bond" within the meaning of Section 141 of the Code. To that end, so long as any installment payments are unpaid, the City and Lender, with respect to such proceeds, such other funds and any Assets, will comply with all requirements of such Code sections and all regulations of the United States Department of the Treasury issued thereunder to the extent that such requirements are, at the time, applicable and in effect. If at any time the City is of the opinion that for purposes of this paragraph it is necessary to restrict or to limit the yield on the investment of any moneys held in connection with this Contract, the City shall so instruct the Lender, in writing, and the Lender shall take such action as may be necessary in accordance with such instructions. Notwithstanding any provisions of this paragraph, if the City shall provide to the Lender an opinion of nationally-recognized bond counsel that any specified action required under this paragraph is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest with respect to the installment payments, the City and the Lender may conclusively rely on such opinion in complying with the requirements of this paragraph, and, notwithstanding any other provisions of this Contract, the covenants hereunder shall be deemed to be modified to that extent.

The City represents that it qualifies as a city for the purposes of Section 103 (a) of the Internal Revenue Code.

D. By executing and delivering this Contract, the City is not issuing or offering for sale any securities under any federal or State securities laws, and no representation or statement to the contrary is authorized or permitted. The Lender must specifically request in writing to the City any actions that the Lender seeks from the City concerning any federal or State securities laws. The City makes no representation, warranty, or agreement that it will agree to any such request.

Notwithstanding Section VII A, a mutual agreement as to continuing disclosure requirements under S.E.C. rules may be included in the Certification Form documentation, attached hereto, at the time of closing.

X. Lender's Covenants

- A. The Lender agrees to assist the City to comply with all reporting requirements of the Code, including preparation for City's signature and the filing of IRS Form 8038-G/GC within 15 days of closing, or such other actions as may be reasonably requested by the City.
- B. The Lender agrees to indemnify the using City department and the City and hold the using City department and the City harmless from and against any liability or expense incurred as a result of any violation or alleged violation of federal or State securities laws by the Lender, or any person or entity assisting the Lender with issuing or selling any financial obligations resulting from the financing of this Contract.
- C. The Lender and it assigns, if any, represent, warrant and agree separately and respectively, as follows:
1. It has sufficient knowledge of, and experience with, contracts similar to this Contract, and it has had sufficient opportunity to review all documentation necessary to make an informed decision to enter into this Contract or accept an assignment of this Contract, as the case may be.
 2. It is fully capable of bearing the financial risk of entering into this Contract or accepting an assignment of this Contract, as the case may be.

XI. City's Covenants

The City agrees that:

- A. It will not create, assume, or voluntarily suffer to exist, any mortgage, pledge, encumbrance, security interest, lien or charge of any kind upon any Assets procured using the financing options of this Contract. Notwithstanding the provisions of this Section XI.A., the City shall provide notice to the Lender in the event it wishes to refinance this contract.
- B. It will keep any Assets in good repair and operating condition.
- C. It will pay the amounts due as listed in the Payment Schedule subject to the provisions of this Contract. It will pay promptly all applicable taxes and other charges when levied or assessed upon any Assets, or Asset operation or use, or upon Lender, in connection with this Contract (exclusive of taxes based on net income). It will not modify or relocate Assets outside of the City or property that the City owns or has exclusive right to use without Lender's prior written consent.
- D. The City further agrees to procure and maintain fire insurance with extended coverage against loss, theft, damage to or destruction of any Asset for the full insurable value thereof for the duration of the Contract, the policy of such insurance being endorsed to show loss payable to the Lender and the City, as their respective interests may appear, or have an equivalent self-insurance program. Upon request, a certificate of such insurance or self-insurance will be furnished to the Lender. Any proceeds received directly by the Lender under such insurance shall be credited to the payment required from the City pursuant to Section XII (Destruction of Assets) .

XII. Destruction of Assets

In the event that any Asset shall be lost, stolen, irreparably damaged or destroyed or otherwise rendered permanently unfit for use from any cause whatsoever prior to the payment in full of all the payments for the affected Asset, the using City department may, subject to the foregoing Section I, either (i) substitute another asset for the destroyed or damaged asset if such substitute asset shall have in the aggregate the same or longer useful life and same or greater value than the original asset for which it was substituted, or (ii) pay to the Lender a sum equal to the principal amount, plus accrued interest, included in the aggregate unpaid payments for such Asset, which shall constitute a partial or total prepayment of payments pursuant to Section IV hereof.

XIII. Defaults

Any one or more of the following are events of default:

- A. The City shall fail to pay, in full, any sum payable by the City when due hereunder following Lender's written notice of such failure, to the using City department, except as provided in Section I, Appropriation of Funds.
- B. The City shall fail to maintain insurance or self-insurance as required in this Contract.
- C. The City shall, for more than 30 days after the Lender has notified the City in writing, fail to comply either in performance or observance thereof, with any other term of this Contract.
- D. Any insolvency proceedings of any character, voluntary or involuntary, shall be instituted by or against the City.
- E. The City shall make an assignment for the benefit of creditors without prepaying the balance of the amount due hereunder.

XIV. Remedies of Lender

If an event of default shall have occurred, the Lender may to the extent permitted by law:

- A. Recover the balance of amounts owed hereunder, subject to Section I, Appropriation of Funds.
- B. Enter any premises where procured Assets may be housed, subject to the City's reasonable security requirements at the site, and take possession and title of such Assets or render them unusable, and retain all prior payment as partial compensation for their use and depreciation. Upon repossession or return of the Assets, the Lender will dispose of the Assets in a commercially responsible manner. Any proceeds of the disposal shall be applied to amounts owed by the City for the Assets.
- C. If the City has failed to keep procured Assets in good repair or operating condition, restore the Assets to good repair or operating condition at City's expense for actual time and materials expended by Lender at Lender's then current charges.
- D. Pursue any other remedy permitted by law or in equity. The prevailing party in a dispute concerning this financing plan will be entitled to reasonable attorney fees and legal expenses in exercising any of its rights and remedies which a court may require to be paid. Waiver of any default shall not be a waiver of any other default. All of the Lender's rights hereunder are cumulative and not alternative.

XV. Closing Documents

The City and the Lender will cooperate in reviewing and executing ministerial documentation reasonably required by the Lender to implement an assignment, if any, including the purchase contract and any resultant purchase order as well as all of the following closing documents.

- A. If requested by the City, the Lender will supply to the City a written Opinion of Bond Counsel, from a Bond Counsel firm acceptable to the City, as to the validity of complying with the Internal Revenue Service regulations concerning the tax-exempt nature of the financing. If this is required for a specific financing (the more complex financings), the City will let the Lender know prior to the interest rate quote for that specific financing.
- B. The Lender agrees to assist the City in complying with all reporting requirements of the Code, including preparation of the IRS Form 8038-G/GC, within 15 days of the date of closing (the date interest starts to accrue), or such other actions as may be reasonably requested by the City, including but not limited to, the

City Controller's Office. The City agrees to review, sign and file the IRS Form 8038G/GC by the date required by the IRS.

C. A signed Certification Form acknowledging the City's review and approval of the description of the Contract, the Assets, the Contract terms and conditions, acceptance of the Assets, public and municipal use, and a statement of self-insurance or insurance will be provided by the City. If in the opinion of the City, any items contained in this document are inaccurate, the City may modify the inaccurate items to a factual representation by mutual consent with the Lender.

D. Opinion of Counsel concerning Contract validity (if requested by the Lender).

E. UCC Form 1 (if requested and prepared by the Lender).

XVI. Nondiscrimination; Penalties

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

B. Subcontracts. Lender 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 (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Lender's failure to comply with the obligations in this subsection shall constitute a material breach of this Contract.

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

D. Condition to Contract. As a condition to this Contract, Lender shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

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

XVII. Additional City Requirements

A. MacBride Principles-Northern Ireland. City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

B. Tropical Hardwoods and Virgin Redwood Ban. City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product.

C. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, responses to RFPs 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's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

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

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

SIGNATURE PAGE

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

CITY

LENDER

Recommended by:

Signature

Signature

Name

Name

Title and Department

Title

Company Name

Address

City State Zip

Approved as to Form:

DENNIS J. HERRERA
City Attorney

By _____
Deputy City Attorney

Approved:

Director of Purchasing